

In the Matter of Arbitration Between:

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**TOWNSHIP OF EDISON**

"Township,"

- and -

**IAFF, LOCAL 1197**

"Association."

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Docket No. IA-2005-091

**INTEREST  
ARBITRATION  
AWARD**

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the Township:**

Mark S. Ruderman, Esq.  
Ellen M. Horn, Esq. on the brief  
Ruderman & Glickman, PC

**For the Association:**

Raymond Heineman, Esq.  
Kroll, Heineman & Giblin

The Township of Edison [the "Township"] and the International Association of Fire Fighters, Local 1197 [the "IAFF" or "Union"] are parties to a collective negotiations agreement [the "Agreement"] effective January 1, 2001 through December 31, 2004. Due to an impasse that developed in voluntary negotiations between the parties, they are operating under the terms of the prior Agreement. On May 12, 2005, the Union filed a Petition to Initiate Compulsory Interest Arbitration with the New Jersey Public Employment Relations Commission ["PERC"]. Thereafter, I was designated to serve as interest arbitrator after a previously appointed interest arbitrator was unable to proceed. Voluntary negotiations continued between the parties without success and a mediation session was held on August 23, 2006. That effort was also unsuccessful leading to the convening of an interest arbitration hearing on January 10, 2007.

At the hearing, the parties developed a full record on the issues in dispute but agreed to allow the record to remain open for the submission of additional documentation, especially on the Township's finances. After the close of the record, each party submitted a post-hearing brief the last of which was received on or about October 20, 2007.

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.

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 OFFERS OF THE PARTIES**

#### **The IAFF**

1. **Duration**

A five (5) year Agreement effective January 1, 2005 through December 31, 2009.

2. **Salary**

Increases to each step of the salary schedule effective January 1 of each proposed contract year.

1/1/05	4%
1/1/06	4%
1/1/07	4%
1/1/08	4%
1/1/09	4%

3. **Recognition/Classification**

The IAFF proposes to change the title of "Inspector" to "Firefighter/Inspector."

4. **Township Proposals**

The IAFF proposes that all Township proposals be rejected.

#### **The Township**

1. **Duration**

A five (5) year Agreement effective January 1, 2005 through December 31, 2009.

2. **Salary**

Increases to each step of the salary schedule effective January 1 of each proposed contract year.

1/1/05	3.2%
1/1/06	3.2%
1/1/07	3.2%
1/1/08	3.0%
1/1/09	2.5%

3. **Freeze Starting Salary**

For employees hired on or after January 1, 2007, the Township proposes to freeze the starting salary at the 2004 level of \$32,809 for the five-year contract term.

4. **Salary Guide Modifications for New Hires**

The Township proposes to add three steps to the salary guide, expanding the current salary guide from eight steps to eleven steps. The first step, Hiring Rate, will remain a six-month step. After completion of the first step, employees will continue to progress to Firefighter 1, a salary step which will continue to be set midway between the Hiring Rate and Firefighter 2. Employees hired prior to July 1 of any year will continue to advance to Firefighter 2 effective the following January 1. Employees hired after July 1 of any year will continue to advance to Firefighter 2 effective January 1 of the year following their one-year anniversary date. Upon advancement to Firefighter 2, the salary guide shall contain nine equidistant steps from Hiring Rate to maximum firefighter salary at Firefighter 10. This proposal will not affect current employees.

5. **Senior Firefighter Differential – Article 27**

The Township proposes eliminating the senior firefighter differential for firefighters hired after December 31, 2004.

6. **Vacation – Article 23**

The Township proposes adding the following language to this Article: ("Unused vacation time shall be prorated in the final year of work for purposes of payout at retirement.") Additionally, the Township proposes to include language that states, ("Vacation days shall not be accrued while an employee is on leave according to the provisions of Article 45.")

7. **Personal Days – Article 26**

The Township proposes adding the following language to this Article: ("Unused personal time shall be prorated in the final year of work for purposes of payout at retirement.") Additionally, the Township proposes to include language that states, ("Personal days shall not be accrued while an employee is on leave according to the provisions of Article 45.")

8. **Longevity – Article 8**

The Township proposes that the following language be added to this Article as Section 3:

Longevity adjustments shall be effective as follows: Any employee whose employment commenced between January 1 and June 30 shall be credited with a full year of service credit on January 1<sup>st</sup> of the anniversary year. Employees hired after June 30 shall receive the longevity increment beginning on the January 1<sup>st</sup> following the anniversary date of their employment.

9. **Shift Differential – Article 29**

The Township proposes eliminating the shift differential of seven percent (7%) above base salary plus longevity to firefighters who work a rotating shift.

10. **Work Week – Article 37 and Overtime – Article 42**

The Township proposes eliminating mandatory two hours of overtime for each forty-two (42) hour week. Section 1 of Article 37 establishes a forty-two (42) hour work week averaged out over four weeks. Section 1 of Article 42 provides that a firefighter who works more than forty (40)

hours in any week must be paid for such overtime work at time and one-half.

11. **Educational Benefits – Article 44**

In Article 44, Section 1, the Township proposes adding the words, “in the amount per credit hour up to the amount as charged by Rutgers University,” so that section 1, in its entirety reads:

Section 1. Any employee who attends school shall be reimbursed for the cost of the tuition and academic fees for all courses taken in the field of Fire Science or in the pursuit of a formal Fire Science Program leading to a degree in the amount per credit hour up to the amount as charged by Rutgers University. Such courses and programs shall be subject to the recommendation of the Chief of the Fire Department with the prior approval by the director of Public Safety. A copy of the paid tuition and fee bill shall be submitted to the business Administrator for reimbursement.

12. **Sick Time – Article 45**

The Township proposes the following changes to Article 45, Sick Time (underline highlights revised language):

Section 1. Employees in the Bureau of Fire Prevention and Training will be granted 120 (one hundred twenty) hours of sick leave per year and Fire Fighter shall be granted 168 (one hundred sixty eight) hours of sick leave per year. Sick days shall not be accrued while an employee is on leave according to the provisions of the Article. Sick time shall be cumulative and each employee shall be paid for such accumulated time in the following manner:

- a) If termination occurs while in good standing, employees will be paid for one half of the total amount of sick leave accrued at the 2004 rate of pay in an amount not to exceed fifty-thousand dollars.
- b) Effective January 1, 2003, any employee having not used one or more sick days for that year will have the option to be paid their current wage rate for a maximum of 168 hours of unused sick leave per year. Effective January 1, 2005, employees will have the option to be paid their current wage rate for up to

eighty-four (84) hours in lieu of carrying them over. Any employee who has not utilized more than eighty-four (84) hours as outlined above, and wishes to be paid wages for their remaining days in lieu of carrying them over, may be paid one (1) hour's current rate of pay for every two (2) unused hours. The employee shall notify the Township of their intent to exercise this option within 30 days after the end of the calendar year and payment shall be made within 30 days.

- c) Effective January 1, 2007, sick time earned may be only accumulated for the purposes of being sick.

Section 7. Hospital confinement and major illness shall be treated in the following manner:

- c) The Employee shall receive full pay during the periods for up to one (1) year as set forth herein; however, employees shall not receive any additional compensation including overtime while on an approved leave under this section. Employee shall utilize seven (7) days of sick time prior to being placed on serious illness or injury leave status as contained within Section 7. herein above.
- d) The employer shall have the option to implement a disability insurance program which shall supersede Sections (a) through (c). The disability insurance program will provide that after seven (7) sick days, an employee shall receive full pay from the insurance company for a period of up to one year under the terms of the policy. The disability payments will be done in a manner so as not to affect the employee's pension contributions.

Section 8. Service connected disabilities shall be treated in the following manner:

- b) Any service connected disability must be verified by the township appointed physician. If a claim made under this section is denied, it is the responsibility of the employee to exercise the option to file an appeal or submit outstanding medical bills through private insurance or filing an appeal in accordance with the workman's compensation laws.

- d) During the period the employee receives full pay, the employee shall endorse over to the Employer any Workers' Compensation benefit check(s) received within 48 hours after the employee's receipt of such check(s). The Chief of Fire, or his designee, shall be entitled to require an employee claiming any Workers' Compensation benefits or compensation under this subsection to provide physicians verification. Employees shall not receive any additional compensation including overtime for any medical visits required as a result of a service connected disability.

Section 9. Any employee covered by this agreement who reports on duty and subsequently reports off duty due to illness within half of the duty shift starting, will be charged against sick time only for those hours actually not worked. Sick time will be charged in either half or full day increments.

13. **Welfare and Pension Benefits – Article 43**

The Township purposes the following changes (as highlighted by underlining to Article 43, Welfare and Pension Benefits:

The Township shall provide a group health and accident insurance plan. The Township shall give the Union notification of any changes in the health and accident policy(s), and the Union shall be advised of such changes at a group meeting if requested.

Section 1. The employer agrees to provide medical, dental, optical, prescription and insurance benefits to all permanent employees as follows:

- A. Dental and optical benefits shall be the same as provided on December 31, 2003.

- B. Prescription Benefits:

Employees will be responsible for the following co-pays:

	<u>Brand</u>	<u>Generic</u>	<u>Mail Order</u>
<u>2007</u>	<u>\$15.00</u>	<u>\$5.00</u>	<u>3x co-pay</u>



<u>2008</u>	<u>\$25.00</u>	<u>\$15.00</u>	<u>3x co-pay</u>
<u>2009</u>	<u>\$35.00</u>	<u>\$25.00</u>	<u>3x co-pay</u>

C. Major Medical and Hospitalization:

Permanent employees hired prior to the execution of this contract shall have the following options:

1. Point of Service (POS) Plan

a. In-Network provider with a co-pay of \$15.00 per visit

b. Out of Network provider as follows:

	<u>2007</u>	<u>2008</u>	<u>2009</u>
i. <u>Individual Deductible:</u>	<u>\$150.00</u>	<u>\$300.00</u>	<u>\$400.00</u>
ii. <u>Family Deductible:</u>	<u>\$300.00</u>	<u>\$600.00</u>	<u>\$800.00</u>

iii. For single coverage, the employee is responsible for thirty (30) percent of the first \$10,000.00 of submitted and covered eligible expenses up to \$3,000.00, excluding the deductible, after which benefits will be paid at one hundred (100) percent of submitted and covered eligible expenses. For family coverage, the employee is responsible for thirty (30) percent of the first \$25,000.00 of submitted and covered eligible expenses up to \$7,500.00, excluding the deductible, after which benefits will be paid at one hundred (100) percent of submitted and covered eligible expenses.

c. Hospital expenses will be included under the deductible and co-pay.

2. Traditional Plan with bi-monthly contributions for 2007 to be as follows:

<u>Single</u>	<u>\$50.00</u>
<u>H&amp;W</u>	<u>\$100.00</u>
<u>Family</u>	<u>\$120.00</u>
<u>P&amp;C</u>	<u>\$90.00</u>

a. Deductibles and co-pays as follows:

- i. Individual deductible -- \$300.00
  - ii. Family deductible -- \$300.00
  - iii. For single coverage, the employee is responsible for twenty (20) percent of the first \$1,500.00 of submitted and covered eligible expenses up to \$300.00, for a maximum of \$600.00 out of pocket, after which benefit will be paid at one hundred (100) percent of submitted and covered eligible expenses. For family coverage, the employee is responsible for twenty (20) percent of the first \$3,000.00 of submitted and covered eligible expenses up to \$600.00 for a maximum of \$1,200.00 out of pocket, after which benefits will be paid at one hundred (100) percent of submitted and covered eligible expenses.
- b. Effective December 31, 2007 the Traditional Plan will be no longer offered.

Section 3. The employer agrees to provide those members currently enrolled in a Township health plan who retired prior to the first day of the month following the execution of this contract the same medical, dental, prescription and insurance benefits as provided to them at the date of retirement, except as follows:

A. Prescription Benefits:

Employees will be responsible for the following co-pays:

	<u>Brand</u>	<u>Generic</u>
<u>2007</u>	<u>\$15.00</u>	<u>\$5.00</u>
<u>2008</u>	<u>\$25.00</u>	<u>\$15.00</u>
<u>2009</u>	<u>\$35.00</u>	<u>\$25.00</u>

Section 4. "Network" as used in this Article refers to the Horizon Point of Service (POS) Managed Care Network.

Section 5. Major Medical and Hospitalization Benefits covered under this article shall have a maximum lifetime limit of two million dollars (\$2,000,000).

Section 6. Any retiree attaining the age of sixty-five (65), and qualified, must enroll into Part A and Part B of Medicare. While the Township will continue to pay for an eligible retiree's medical benefits, the Township will not be responsible for a retiree's Medicare premium. Employees who elect to receive the Traditional benefits will be responsible for monthly contributions as follows:

	<u>2007</u>	<u>2008</u>	<u>2009</u>
<u>Single</u>	<u>\$12.00</u>	<u>\$20.00</u>	<u>\$40.00</u>
<u>H&amp;W</u>	<u>\$18.00</u>	<u>\$16.00</u>	<u>\$52.00</u>
<u>Family</u>	<u>\$24.00</u>	<u>\$30.00</u>	<u>\$60.00</u>
<u>P&amp;C</u>	<u>\$16.00</u>	<u>\$29.00</u>	<u>\$58.00</u>

Section 7. Life Insurance Policy. The Employer agrees to provide at no cost to the employee, a life insurance policy in the amount of Ten Thousand (\$10,000) Dollars. The policy shall cover Life, Accidental Death, and Dismemberment. The amount will be reduced by 50% at age 65, again by 50% at age 70. Accidental death and disability terminates upon retirement. This policy shall be issued without medical evidence of insurability. A copy of this policy shall be presented to the Union.

Section 8. All health benefits as set forth in this article shall continue in full force and affect for retired employees and their dependents to the extent that the law permits. All health benefits shall continue in full force until a deceased employees spouse remarries and or all dependent children reach the age of twenty-three (23) years.

Section 9. The Employer may elect to provide an alternative health benefit to those specified above, provided such alternative plan is at least equivalent to or better than those coverages specified herein.

Section 10. Each employee may voluntarily elect, effective July 1, 1998, to reduce the insurance coverage directly provided by the Township for the employee and/or his/her family in order to avoid dual coverage by the Township and the employee's spouse's coverage (other than the Township). The employee has the option to reduce or

eliminate his/her number of members covered (i.e. family coverage to single coverage or husband/wife coverage or no coverage, if applicable) to a lower coverage status than the maximum provided. If the employee elects to reduce the coverage provided by the Township, the employee shall receive fifty (50%) of the difference between the original coverage premium under COBRA for the period of time the employee receives the reduced coverage, which shall not be less than twelve (12) consecutive months. The employees shall, prior to receipt of such payment, provide certification of spousal insurance coverage. The employee may return to previous coverage status by providing the Township Administrator with written notice at least 90 days prior to the open enrollment period.

14. **Firefighter/EMTs**

The Township proposes adding the following language to this Article: "As a condition of continued employment, effective July 1, 2007, all personnel shall have and maintain New Jersey EMT certification."

The Township proposes replacing Section 6 with the following language:

Section 6. The Emergency Medical Technician's (EMT) differential shall be set at six percent (6%) of base salary for E.M.T.-D and seven percent (7%) of base salary for Senior EMT. The Emergency Medical Technician's differential shall be payable only to those assigned to Emergency Medical response. There shall be no EMT differential payments made to any other firefighter under this or any other Article of the agreement. No EMT differential payments shall be made to firefighters hired after December 31, 2004.

- (a) Firefighter/EMTs will be eligible for the Senior EMT differential after five years employment as a firefighter and five years as an EMT provided they are assigned to Emergency Medical response.
- (b) The Township will equitably rotate the opportunity to work as a Senior EMT among all eligible firefighter/EMTs.
- (c) One eligible firefighter/EMT shall be designated as Senior EMT on each rescue vehicle. In the event that

there are no eligible firefighter/EMTs assigned to a fire rescue vehicle, the Township will designate a firefighter/EMT to perform the duties of a Senior EMT but without additional compensation.

### **BACKGROUND**

The negotiating unit consists of 114 Firefighters, Firefighter/EMTs and Inspectors. It excludes superior officers who are represented in a separate unit. Overall there are 142 firefighters and fire officers. Work load reports reflect that the fire department is the fourth busiest in the state among those who provide comprehensive fire, rescue and emergency medical services. In 2006, the department responded to 7,350 calls. The ambulance services provided by the Fire Department generate third party billing with \$1,080,674 collected from medical transportation between June 24, 2005 and December 7, 2006.

The Township is located in Middlesex County and covers slightly more than 30 square miles. The Township is the fifth largest municipality in the state. The fire department services a population of 100,000 residents. The Township has a large commercial/industrial component that accounts for one-third of its valuation. The average tax bill in the Township as of July 30, 2006 was \$5,795 and the average home value was \$298,065.

Negotiations between the parties reached an impasse mainly over salary, compensation related issues and health insurance. The Township rejects the Union's salary proposals and also the Union's unwillingness to agree to any of

the many “concessions” the Township has proposed. The Union has balked over what it terms “substandard wage increases” offered by the Township as well as the many concessionary proposals made by the Township that the Union claims would “gut” the Agreement. Due to the impasse on these issues, a substantial portion of the exhibits and arguments of the parties emphasize the Township’s finances, comparability analyses that include internal and external comparisons, overall compensation and benefits presently being received by the unit employees and, to a lesser extent, the cost of living and the continuity and stability of employment. Each party submits that its last or final offer is more consistent with all of the statutory criteria including the interests and welfare of the public.

Against this general backdrop I set forth the positions of the parties in support of their respective last offers.

### **The Positions of the Parties**

#### **The IAFF**

The Union has proposed what essentially is a “maintenance agreement.” That is, it proposes to carry the terms of the existing agreement forward adjusted by 4% increases in each year of a five year agreement. In addition, it proposes to change the title of “Inspector” as it is listed in the Agreement to the title of “Firefighter/Inspector”. The title change is said to be necessary to ensure the continued participation of the three Fire Inspectors in the New Jersey Police and

Fireman's Retirement System. The Union points out that the title of "Inspector" is not an approved eligible title in the System unlike the title of "Firefighter/Inspector". The change is intended to clarify that the title would ensure the continued participation of the Inspectors in their existing pension system.

The Union contends that its salary proposal is consistent with salary changes that have been made in firefighter agreements within the State of New Jersey through voluntary settlements and interest arbitration awards. It also submits that its proposal is less in value than the voluntary agreement that the Township negotiated with PBA Local 75 that extends to December 31, 2008. The Union provides a sampling of such salary adjustments in several municipalities in recent arbitration awards and voluntary settlements.

#### **Awards**

	<u>2005</u>	<u>2006</u>	<u>2007</u>
Plainfield	-	4%	4.25%
Long Branch	4.5%	4.5%	-
Atlantic City	4%	4%	4%

#### **Voluntary Settlements**

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
South Orange	4.125%	4.125%	4.125%	
Pennsville	3.625%			
Pleasantville	4.5%	4.5%	4.5%	4.5%

In addition to the above, the Union emphasizes that its proposal is consistent with negotiated wage increases in fire departments in geographical proximity and that those agreements were entered into without the concessions that have been proposed by the Township in this proceeding. On this point, the Union asserts that:

Woodbridge Fire District No. 1 recently entered into a four year agreement with the Woodbridge Fire Fighters Association, Local 290 providing wage increases of 4% in 2007, 4.5% in 2008, 4% in 2009, and 3.75% in 2010 (UX010). Perth Amboy recently entered into a 4 year agreement with IAFF, Local 286 providing a 3% increase in January, 2005, a 1% increase in July 2005, a 4% increase in 2006, a 4% increase in 2007 and a 4% increase in 2008, while making improvements in the contractual EMT stipend and longevity schedule. The wage increase proposed by Local 1197 is consistent with the trend in increases in firefighter compensation and will preserve the differential between the firefighters employed in Edison and those employed elsewhere.

Turning to the Township's voluntary agreement with PBA Local 75, the Union submits that the PBA agreement provided for the following wage increases:

2005 - \$1,500 & 3.8%  
2006 – 3.9%  
2007 – 4.0%  
2008 – 3.6%

In addition to the above, the Union points out that the PBA agreement provided for an additional increase of .4% if 60% of the police officers who were enrolled in the Traditional health insurance plan switched to the PPO or POS



plans that were negotiated between the Township and the PBA. Pursuant to that agreement, 60% of 118 members, or 71 employees would have to switch to the PPO plan by July 1, 2007. The Union acknowledges that its salary schedule is higher than the PBA's but that firefighters work a total of 2,184 hours per year (of which 104 hours are valued at time and one half) compared to the 1,950 hours per year worked by police officers. Based upon these differences, the firefighters work an additional 130 hours of scheduled straight time work or 6 2/3% more than police officers. According to the IAFF, when the salary schedules are adjusted for the 6 2/3% additional straight time hours worked by firefighters, the difference between a Step 7 Police Officer and a Step 7 Firefighter is calculated by the Union to be approximately \$1,000. The Union argues that its wage proposal allows for adjusted police salaries to catch up with the firefighter salaries on an hourly basis compared to the Township's proposal that it calculates would decrease unadjusted firefighter salaries at Step 7 from 101.2% of the police salary in 2004 to 96.7% of the police salary in 2008.

The Union points out additional differences between the PBA settlement and the Township's proposal that it made in this proceeding. According to the Union, the PBA's agreement, in addition to the aforementioned wage increases, also provided additional improvements in the following areas: increased minimum for subpoenas, emergency response time, initiation fee and range fee reimbursement, honor guard compensation, increased educational reimbursements, increased orthodontics, sick day buy back, and the elimination

of the \$3 co-pay for generic drugs. In addition, the Union asserts that the Township's settlement with the PBA did not involve the giveback of many of the economic terms that the Township now seeks to change in the firefighters' agreement such as:

- The PBA's vacation and personal day benefits are not pro-rated at time of retirement (UX-3, p. 33 and 41-43)
- The PBA's starting salary was not frozen and continues to increase over the life of the agreement (UX-3, p. 46)
- The steps in the PBA's salary structure were not increased and the 7 step structure continues over the life of the agreement (UX-3, p. 46)
- The PBA's day shift differential of 3%, evening shift differential of 4.6% and night shift differential of 6.4% were preserved for the life of the Agreement (UX-3, p. 48), while the Township proposes to eliminate the 7.5% differential paid to firefighters for hours worked between 6 p.m. and 8 a.m.

The IAFF contends that despite the differences that exist between the PBA agreement and the Township's proposal, the Township seeks many additional concessions from the IAFF including:

- Reducing the accrual of vacation and personal days for retiring employees provided at Articles 25 and 26;
- Freezing the starting salary at the 2004 level, adding 3 steps to the current 7 step salary schedule, and eliminating the 7% shift differential for new hires;
- Slashing the current sick leave accrual benefit previously voluntarily negotiated by the parties and reducing the sick leave buy[back program proposed by the Township for 2003;
- Increasing the prescription for co-pay from \$3 to \$35/\$25 by 2009;

- Imposing annual contributions in 2007 ranging from \$1,300/year for single coverage to \$3,120/year for family coverage on the 100 firefighters who utilize the Traditional Plan, an annual cost of approximately \$271,180 and eliminating the Traditional Plan in 2008.
- Reducing health insurance benefits, including increased deductibles and co-pays and limitations on benefits for new hires;
- Eliminating of the 7% shift differential paid on hours worked between 6 PM and 8 AM, a 4.3% reduction in wages;
- Elimination of regularly schedule overtime pay in excess of 40 hours, a 7.5% decrease in wages for the over 100 firefighters on 24 hour shifts, working an average of 42 hours per week.

The Union acknowledges that the Township and the PBA agreed to make changes to their health insurance provisions. These include a PPO and POS plan and contributions towards the Traditional plan. But it contends that the Township's position in this proceeding is radically different from the changes it made in the PBA agreement. The PBA agreement also included changes by way of additional compensation to encourage police officers to transfer from the Traditional plan into their existing POS plan and a newly negotiated PPO plan. However, the IAFF states that, unlike the PBA settlement, the Township proposes to eliminate the IAFF Traditional plan in 2008 and proposes substantially higher contribution levels than were provided for in the PBA agreement. In addition, the Union alleges that the Township refused to provide the IAFF with needed plan design data for the POS plan that it has proposed to replace the Traditional, POS2 and HMO plans. This, according to the Union has resulted in an inability to negotiate any changes to the existing health insurance program. The Union asserts that this has resulted in the Union being unable to

compare the details in the coverage or the networks that might accompany the changes that the Township has proposed.

The Union disputes the Township's position that it is not in the position to finance an agreement at the level that the Union has proposed. Relying upon official budget documents in evidence, the Union makes the following argument:

The Township of Edison has the 4<sup>th</sup> high tax ratable base in the State. As reported in the July 30, 2006 Star Ledger, the average residential property tax bill of \$5,695 ranks in the 56<sup>th</sup> percentile. The average homeowner, in 2005, paid 5.29% of their income for property taxes, ranking Edison at the 35 percentile rank among New Jersey municipalities. (UX-20). With an average tax bill and above-average homeowner income, the Township is hardly a "tax traumatized" community. From 2000 to 2005, Edison taxes increased 31%, ranking 12<sup>th</sup> among the county's 20 municipalities.

The Township has consistently generated budget surpluses. The 2005 budget utilized the prior year's surplus to keep the tax rate stable while increasing spending. (UX-29-32). Thus, the 2005 unreserved fund balance was reduced to \$3,811,774. The 2006 budget, projected a current final balance of \$8,461,649, including \$3,871,952 in "Reserves and Receivables." It is noteworthy that the Township had moved an additional \$2.1 million to an accumulated sick time reserve at the end of 2006, which had the effect of understating the Township's surplus balance. As of June 30, 2007, Edison's Annual Financial Statement indicate a surplus of \$4,981,726.

The Township has also benefited from a positive revenue and expenditure experience. In FY 2005, the Township budgeted for \$97,354,122 in revenue and actually had \$99,573,367 in revenue, 102.3% of budget. Further, in FY 2005, the Township had budgeted expenditures of \$99,474,580 and actual expenditures of \$97,217,876, 99.7% of budgeted expenditures. The Township had a similar experience in 2004. For FY 2006, realized current fund revenue was \$102,618,736, 2% greater than anticipated. Additionally, FY 2006 realized current fund appropriations were \$100,841,421, 99% of the anticipated appropriations. Thus, revenues and transfers into the current fund exceeded budgeted

predictions and expenditures and transfers out were below predictions for both 2004, 2005 and 2006 – a positive indicator of the Township's fiscal health. More importantly, current fund revenues exceeded expenditures for all three fiscal years on a budgetary basis.

The Union asserts that the Township has ignored the contribution that firefighters make to the Township's revenue stream. According to the Union, the Township instituted a third-party billing procedure for ambulance services provided by the firefighters. This generated \$910,600 in billing for 3,513 responses without medical transport and 520 responses with medical transport in fiscal year 2005. The Union submits documents reflecting that between June 24, 2005 and December 7, 2006, the Township collected \$1,080,674.76 in third-party billing from paid medical transportation.

The Union urges rejection of the Township's proposals on vacations, personal days, longevity, educational benefits, sick time, EMTs, shift differential and overtime. The Union contends that these proposals were unsupported in the record:

Nothing in the record supports the continued freezing of the salaries of new hires at 2004 levels. The proposal on accumulated sick time eliminates a significant accrued benefit which was subject to extensive voluntary negotiations in 1995 and 2001. Firefighters earn a shift differential of 7.5% on all hours worked between 6 pm and 8 am, approximately 1274 hours per year. The elimination of the shift differential would result in a wage reduction of 4.3%. Such a reduction is unwarranted by the trends in firefighter compensation and is inconsistent with the Township' agreement with the PBA, which provides a shift differential on all three shifts. The elimination of overtime pay for regularly scheduled work in excess of 40 hours per week seeks to undo a grievance arbitrator's decision dating

back to 1994. Firefighters have long been paid 1 ½ for the two regularly scheduled hours of overtime they work as part of the one on / three off schedule of 24 hour shifts. Elimination of this contractual overtime would result in a 7.5% decrease in wages, as firefighters work an additional 2 hours per week without pay.

The Union calculates that the negative impact of concessions proposed by the Township exceed the value of the Township's wage offer.

Based upon the above, the IAFF seeks the awarding of its last offer in its totality.

### **The Township**

The Township proposes to make substantial changes to many major terms and conditions of employment that are set forth in the existing Agreement. These have been previously set forth above in the Township's Final or last offer. The Township contends that its proposals, while including many concessions, more reasonably reflects the statutory criteria than does the proposals of the IAFF. The Township asserts that its proposals more effectively focus on terms of the Agreement that more closely fit within its budget plans. This is said to be the essence of the criterion: "the interests and welfare of the public."

The Township submits that the comparability criteria set forth in N.J.S.A. 34:13A-16(g)(2)(a)(b) and (c) supports its last offer. The first reference is to (2)(a), terms provided in the private sector. Citing Labor Relations Reporter data,

the Township points out that wages increased nationally by 3.2% in 2005 and 3.3% in 2006 with projections for 2007 of little, if any acceleration in wages. In New Jersey, the overall increase in wages "for all sectors" was 2.9% in 2005. Turning to the public sector, the Township points to data reflecting increases of 3.4% in 2005 (for state and local contracts nationally) and 3.1% in 2006. With respect to increases in the same or comparable jurisdictions, the Township submits a comparison of maximum firefighter salaries in 2004 for twenty seven New Jersey municipalities.

**2004 NORTHERN NEW JERSEY COMPARISON OF  
MAXIMUM FIREFIGHTER SALARIES**

<b>No.</b>	<b><u>Municipality</u></b>	<b><u>Date Effective</u></b>	<b><u>Salary</u></b>
1	Edison Township	1/1/2004	\$81,775.00
2	Hackensack	1/1/2004	\$79,969.00
3	Englewood	1/1/2004	\$78,685.00
4	Kearny	7/1/2003	\$74,558.00
5	Springfield Township	1/1/2004	\$74,128.00
6	Summit	1/1/2004	\$73,824.54
7	Jersey City	1/1/2004	\$71,950.00
8	Linden	1/1/2004	\$71,806.00
9	Newark	1/1/2004	\$70,946.00
10	Passaic	1/1/2004	\$70,085.00
11	Carteret Borough	1/1/2004	\$69,304.00
12	Elizabeth	1/1/2004	\$68,708.00
13	Millburn Township	1/1/2004	\$68,422.31
14	Westfield	1/1/2004	\$68,101.00
15	Perth Amboy	1/1/2004	\$67,264.00
16	South Orange Village Township	1/1/2004	\$66,574.94
17	Cranford Township	1/1/2004	\$66,114.00
18	Nutley Township	1/1/2004	\$65,864.24
19	Hillside Township	1/1/2004	\$65,190.00
20	Harrison	1/1/2004	\$65,182.00
21	Bloomfield	1/1/2004	\$64,942.00
22	West Orange Township	1/1/2004	\$64,539.00
23	Belleville	1/1/2004	\$64,247.00
24	Rahway	1/1/2004	\$63,590.00

25	Roselle Borough	1/1/2004	\$63,271.94
26	Old Bridge Township	1/1/2004	\$50,000.00
27	Monroe Township	1/1/2004	\$46,425.00

**Average:** \$67,980.22  
**Median:** \$68,101.00

Among these municipalities the Township points out that its firefighters, with five full steps to reach top pay, ranks among the best in the number of years it takes a firefighter to reach maximum:

#### **NO. OF STEPS – FIREFIGHTERS, NORTHERN NEW JERSEY**

<b>No.</b>	<b>Municipality</b>	<b>No. of Steps</b>
1	Kearny	10
2	Passaic	9
3	Old Bridge Township	9
4	Westfield	8
5	Perth Amboy	8
6	Linden	8
7	Harrison	8
8	West Orange Township	7
9	Teaneck Township (as per contract beginning 6/1/2004)	7
10	Springfield Township	7
11	Newark	7
12	Jersey City	7
13	Hillside Township	7
14	South Orange Village Township	7
15	Summit	6
16	Roselle Borough	6
17	Rahway	6
18	Englewood	6
19	Cranford Township	6
20	Carteret Borough	6
21	Belleville	6
22	Millburn Township	5
23	Edison Township	5
24	Bloomfield	5
25	Nutley Township	5
26	Elizabeth	3



Average:  
Median:

6.69  
7

The Township contends that the Agreement also confers generous overall benefits that compare most favorably with any other fire department. These include 6% or 7% EMT pay, a shift differential equal to 7% of base salary including longevity, a 10% longevity benefit at the maximum level and fifteen paid holidays. In addition to the additional compensation for hours worked between 40 and 42, the Township seeks a reduction or elimination in many of these benefits.

The Township focuses heavily on its health insurance proposals. It contends they are in line with recent trends including at the state government level and various county and municipal agreements that have provided concessions such as premium cost sharing and "benchmark" plans with differences in cost paid by employees for higher cost plans. The Township makes argument with respect to comparisons of the plan enjoyed by firefighters with those in other Township bargaining units:

Despite rapidly rising costs, the Township provides its firefighters and their families with comprehensive medical, prescription and vision benefits at **NO COST** to the employee. As discussed above, the Township does not participate in the New Jersey State Health Benefits Program (the "SHBP"). Instead, it self-insures its medical, prescription, dental and vision benefits for its about 900 employees and about 200 retirees. Horizon Blue Cross and Blue Shield of New Jersey administers the Township insurance benefits. The Township has three insurance plans. First, the Township has a Preferred Provider Option Plan ("PPO Plan"). Second, it has a

Hospital/Medical-Surgical/Major Medical Plan ("Traditional Plan") which has a 100/80 co-insurance and a \$100 deductible. Third, it has two Points-of-Service Plans ("POS Plan"), one with a 100/60 co-insurance, a \$1,000 deductible and a \$5 co-payment, and one with a 100/70 co-insurance, a \$150 deductible and a \$15 co-payment. All plans provide the following types of coverage: (1) single, (2) two adults, (3) family, and (4) parent and child.

Because the Township is self-insured, premium rates do not apply. Instead, the cost of coverage can be illustrated by the COBRA rates in effect for each of the plans. The rates effective from July 1, 2007 until June 30, 2008 show that the PPO Plan is the most expensive. Monthly continuation family coverage costs \$1,753.12 while single continuation coverage costs \$607.62. See Prospective Rating Horizon HMO attached as Exhibit 7. The Traditional Plan costs less than the PPO Plan but more than the POS Plan. Monthly family continuation coverage costs \$1,415.51, while single continuation coverage costs \$553.15. See Administrative Services Agreement Hosp/Med-Surg/Major Med Pace attached as Exhibit 8. Monthly continuation coverage under the POS Plan costs \$1,223.59 for family coverage and \$476.49 for single coverage. See Administrative Services Agreement Horizon POS attached as Exhibit 9.

All plans are not offered to all employees. The Township has eleven bargaining units: Carpenters (public works employees); UAW (sewer employees); L32 (public works supervisors); AFSCME (white collar workers); Nurses; Crossing Guards; EMT's; PBA; SOA; IAFF; and IAFF SOA. The Township also has non-union employees. The PPO Plan is offered to the Crossing Guards, Nurses and PBA/SOA. Employees in these units do not pay any contribution through payroll deductions toward the cost of coverage. See Summary of Contributions, Deductibles and Prescription Co-Pays attached as Exhibit 10. The Crossing Guards and the Nurses pay a \$300/\$600 deductible while the PBA/SOA pay a \$200/\$400 deductible. See Exhibit 10.

The Township offers the Traditional Plan to AFSCME, Carpenters, L32 Supervisors, EMT's, PBA/SOA, IAFF/Supervisors and non-union employees. Monthly contributions toward the cost of single coverage range from \$0 for the PBA/SOA and IAFF/Supervisors to \$74 for EMT's. Monthly contributions toward the cost of family coverage range from \$0 for the IAFF/Supervisors to \$194 for EMT's. In fact, the IAFF/Supervisors are the only units that do not contribute toward the cost of two adults, family or parent and child under the Traditional Plan. See Exhibit 10. Even the PBA/SOA contribute \$54 per month toward the cost of coverage under the

two adults, family or parent and child. All employees have a \$300/\$600 deductible. See Exhibit 10.

The Township offers the POS Plan to all of the units. The Township does not collect monthly contributions toward the cost of coverage from any unit, except UAW, which pays \$33.10 per month toward coverage. Monthly contributions for family coverage range from \$0 for Crossing Guards, Nurses, PBA/SOA, and IAFF/Supervisors to \$100 for Carpenters and L32 Supervisors. See Exhibit 10. The PBA/SOA and IAFF/Supervisors have a \$1,000/\$2,000 deductible while the remaining units have a \$150/\$300 deductible. See Exhibit 10.

Although the PPO Plan is presently the most expensive, the Township aims to phase out other plans in favor of the PPO Plan for all employees. The number of participants will enable the Township to obtain discounts that will ultimately contain costs. Therefore, while the PPO Plan costs more at the outset, the Township will achieve cost effectiveness if all employees participate in the PPO Plan. Additionally, the IAFF should be required to contribute to the cost of coverage through payroll deductions to help contain dramatically rising costs.

Edison has experienced a huge increase in its prescription insurance costs. In 2001, the Township paid \$2,098,720.24 for prescriptions plus \$29,732.94 in administrative fees for a total prescription program cost of \$2,128,453.18. See E-1, Section 6, Part 5. In 2002, the Township paid \$2,659,966.52 for prescriptions plus \$37,585.47 in administrative fees for a total prescription program cost of \$2,697,551.99, an increase of 26.7% over 2001. In 2003, the Township paid \$3,323,227.52 for prescriptions and \$27,970.07 in administrative fees, for a total prescription program cost of \$3,351,197.59, an increase of 24.2% over 2002. In 2004, the Township paid \$3,534,625.71 for prescriptions and a \$13,055.40 administrative fee for a total prescription program cost of \$3,547,681.11, an increase of 5.9% over 2003. In 2005, costs rose to \$3,717,716.53, an increase of 4.8% over 2004. In 2006, prescription program costs rose to \$4,267,244.65, an increase of 14.8% over 2005. See E-1, Section 6, Part 5. From 2001 through 2006, the cost of the Township's prescription program doubled.

Employees presently pay a \$3.00 per prescription co-pay, regardless of whether the drug is brand-name or generic. The Township seeks to increase the prescription co-pays as follows:

	<u>Brand</u>	<u>Generic</u>	<u>Mail Order</u>
<b>2007</b>	\$15.00	\$5.00	3x co-pay
<b>2008</b>	\$25.00	\$15.00	3x co-pay
<b>2009</b>	\$35.00	\$25.00	3x co-pay

These increases will defray only a slight portion of the increased in costs the Township has absorbed over the last few years.

In comparing the IAFF \$3.00 co-pay with other firefighter units in northern Jersey, Edison ranks fifth among the seventeen municipalities. See E-1, Section 2, Part -4. Co-pays on prescriptions range from \$1.00 generic/\$5.00 brand name in Harrison and Kearny to \$5.00 generic/\$12.00 brand name in Springfield and West Orange. See E-1, Section 2, Part 4. With the exception of Elizabeth, where firefighters have a \$5.00 co-pay, every municipality has a higher co-pay for brand-name prescriptions than generic prescriptions. See E-1, Section 2, Part 4. Six of the seven municipalities, Hillside, Linden, Belleville, Bloomfield and Cranford have a \$5.00 generic/\$10.00 brand name prescription co-pay. See E-1, Section 2, Part 4. Therefore, in addition to the dramatic escalation in the Township's prescription coverage costs, comparisons support an increase in the \$3.00 brand name/\$0.00 generic prescription co-pay enjoyed by the IAFF.

Comparisons within Edison also support an increase in the prescription co-pay. The IAFF/Supervisors have the lowest prescription co-pay in the Township. PBA/SOA have a \$10.00 brand name/\$0.00 generic co-pay, \$7.00 more per brand name prescription than the IAFF. See Exhibit 10. The Crossing Guards and Nurses, who have a \$15.00 brand name/\$5.00 generic co-payment, pay significantly more than the IAFF/Supervisors. See Exhibit 10. The EMT's who have a \$12.00 brand name/\$2.00 generic also pay substantially more than the IAFF/Supervisors. See Exhibit 10. Because the IAFF has enjoyed the lowest prescription co-pay in the Township among all employee groups, they have received significant savings over the years, while the Township has absorbed spiraling increases in costs. This warrants the imposition of a significantly higher prescription co-pay for the IAFF. Therefore, comparisons to other units within the Township support a dramatic increase in the prescription co-pays.

The Township also provides its employees with dental insurance, and does not seek to implement any change in the dental insurance

benefit. For the second half of 2001, expenditures totaled \$466,289.04. The administrative fee of \$5.50 per employee per month adds an additional cost of \$36,300, for a total of \$502,589.04. In 2002, the Township paid \$1,062,679.65 for dental costs, plus an administrative fee of \$5.50 per employee per month to \$5.74 per month, for a total annual administrative cost of \$74,184, yielding a total expense for dental insurance of \$1,136,371.27. In 2004, dental expenses equaled \$1,213,976.95. Total expenses, including the \$75,768 administrative fee cost, equaled \$1,289,744.95. Dental expenses for the first half of 2005 equaled \$636,112.88. Inclusive of the \$37,884 administrative fee, dental insurance cost the Township \$673,996.88 for the first half of 2006. From 2002 until 2005, dental insurance costs increased from \$1,135,279.65 to \$1,289,744.95, an increase of 13.6%. See E-1, Section 6, Part 7. The dramatic increases in the cost of insurance supports the reasonableness of the Township's health insurance proposals.

Turning to the criteria that concerns the Township's financial posture, the Township points to the New Jersey Local Government Cap Law (see N.J.S.A. 34:13A-16(g)(5) and its restrictions concerning the impact of wage increases on the budget. The Township stresses that in 2004 the legislature eliminated many exceptions from the Cap Law and modified others and also promulgated a new law placing a 4% cap on increases in the tax levy.

The Township contends that an awarding of the Union's last offer would have negative financial impact on the governing unit, its residents and tax payers [See, N.J.S.A. 34:13A-16(g)(6)]. The Township submits charts that calculate the differences in costs between the respective positions of the parties concerning the salary proposals. According to the Township the Union's wage proposal, including increments, exceeds the cost of the Township's proposal by \$65,231 in 2005. According to the Township the Union's wage proposal, including

increments, exceeds the cost of the Township's proposal by \$141,902 in 2006. According to the Township the Union's wage proposal, including increments, exceeds the cost of the Township's proposal by \$226,735 in 2007. According to the Township the Union's wage proposal, including increments, exceeds the cost of the Township's proposal by \$339,675 in 2008. According to the Township, the Union's wage proposal, including increments, exceeds the cost of the Township's proposal by \$516,548 in 2009 for an overall difference during the contract term of \$1,290,092.

The Township asserts that its last offer is more consistent with the consumer price index (CPI) than the Union's. It submits that the CPI increased by 3.4% in 2005 and by 2.5% in 2006. The Township points out that the CPI includes increases in the cost of medical care and medical insurance and that the Township's firefighters do not contribute to the cost of their health insurance premiums.

Based upon all of the above, the Township urges acceptance of its last offer in its totality.

### **DISCUSSION**

The IAFF and the Township have substantial documentary evidence, testimony and oral and written argument in support of their last offers. I am required to make a reasonable determination of the above issues giving due

weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

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

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

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

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

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

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

(4) Stipulations of the parties.

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

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

(7) The cost of living.

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

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



In interest arbitration proceedings, the party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis for its proposed change. I will apply that principle as part of my analysis to the issues in dispute. The burden to be met must be at a level beyond merely seeking change without sufficient evidentiary support. Any decision to award or deny any individual issue in dispute will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. In other words, there may be merit to awarding or denying a single issue if it were to stand alone, but a different result may be reached after assessing its merits within the context of an overall award.

The IAFF and the Township have each addressed the statutory criteria in support of their respective positions. The award must represent a reasonable determination of the issues in dispute. The statute requires that all factors be considered and weighed to allow for a balancing of all of the relevant criteria when making a reasonable determination of the disputed issues. In my evaluation of the evidence on the disputed issues in this proceeding, I find that all of the criteria are relevant but that the most significant weight must be given to the factors that deal with the interests and welfare of the public,<sup>1</sup> internal comparability between the IAFF and other units within the Township (including the terms of the most recent PBA agreement) and the financial impact of the terms of the Award on the governing body, its residents and taxpayers. While

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<sup>1</sup> Subsumed within this criterion are subsections (g)(5) and (g)(9). Statutory spending limitations and caps on tax levy require adherence by the Township to these laws. The terms of the Award may not require the Township to exceed its spending and taxing limitations.

relevant, less weight shall be given to the cost of living, the continuity and stability of employment and the overall compensation and benefit scheme currently included in the parties' agreement.

The Township and the IAFF have widely divergent views on what the terms of the new agreement should be, especially on the major economic issues. One common position is contract duration. Each proposes a term of January 1, 2005 through December 31, 2009. I accept their positions on contract duration as a stipulation (see N.J.S.A. 34:13A-16(g)(4) and accordingly award a contract term of January 1, 2005 through December 31, 2009.

There is only one non-economic issue that has been presented. The IAFF has proposed to change the title of Inspector to Firefighter/Inspector. According to the IAFF, this proposal is based solely on insuring that the three Fire Inspectors have a title that conforms to the title that is eligible in the New Jersey Police and Fireman's Retirement System. As such, the proposal is not substantive and not intended to change the qualifications or requirements that presently exist for employees who occupy the position. No evidence has been presented in opposition to this proposal. Accordingly, the proposal is awarded.

I next turn to the economic issues. The disputed economic issues are so many and so significant they must be considered not only individually but also in their totality. It is ordinarily and traditionally accepted in collective negotiations

that a reasonable determination of the issues, by voluntary agreement or by award, must take into consideration the total package that is reached. The statutory requirement to calculate total net annual economic change is based upon this principle.

In the case at hand, the IAFF's view of new agreement is simply to have the existing wage scales adjusted by 4% annually and to reject any and all of the adjustments or concessions that the Township has proposed. It seeks guidance from the Township's voluntary agreement reached with the PBA especially in the wage area as well as in external comparisons in various municipal fire departments. The IAFF points to the fact that the PBA agreement averages in excess of 4% over the four year contract duration. The Township rejects this approach. Instead, it seeks many significant "givebacks" in existing contract terms while proposing wage increases well below the 4% the IAFF seeks. The Township cites financial concerns within its budget that necessitate a result less than the PBA agreement as well as recent trends in the public sector towards more concessionary bargaining, especially in the health insurance area.

All of the statutory criteria have some relevance, directly or indirectly, when setting economic terms. The more significant question is the weight to be given to the criteria. Virtually all of the statutory criteria implicate the interests and welfare of the public. By way of example, statutory financial limitations and the financial impact of the terms of an award on the public employer, while

separate criterion, are among the items that must be considered under the public interest criterion. More recently, the law has been amended to require the limitations imposed on the Township under the "tax levy cap" legislation. But the interests and welfare of the public may also be affected by ensuring that morale and the high standards of performance of its fire department are maintained. This Township has substantial business, industrial and commercial interests as well as a diverse residential base. The record reflects the ability of the fire department to preserve the public's health and welfare. Expert fire protection and emergency medical services are provided by unit personnel and substantial revenues are derived by personnel engaged in ambulance services. Comparability is a relevant factor warranting consideration, especially among Township employees such as in police and fire who have strong common interests in providing public safety services and who work in dangerous, life threatening environments. Indeed, each party makes strong arguments in support of its respective position based upon comparability. The adjustments the Township has made in its PBA unit are relevant considerations when assessing the changes to be made in the IAFF agreement.

The internal relationship between public safety officer units, absent some extraordinary factors that are not present here, is clearly an appropriate consideration and one that carries more weight than external comparisons that extend geographically beyond the Township. If this were not the case, the Township's labor relations authority within its own jurisdiction would erode and

give way to decisions made beyond its boundaries over which it has no control. For example, the Township's agreement with the PBA concerning health insurance modifications is based upon seeking greater control over its own costs. This is a more significant consideration than the IAFF's argument that such agreements are not typical between municipalities and employee organizations that represents firefighters. But the Township must also recognize that it cannot seek to be selective in having weight given only to the health insurance portion of the PBA agreement while minimizing the weight to be given to its other significant economic terms. In sum, a reasonable award here must include consideration of the internal pattern of settlement. [See Union County, P.E.R.C. No. 2003-33, 28 NJPER 459, and N.J.S.A. 34:13A-16(g)(2)].

The statute requires that consideration be given to the financial impact of an award and on the Township's spending and taxing limitations. The Township's financial posture is reasonably healthy. It has a high tax ratable base and ranks near the median in residential taxation. It has shown an ability to regenerate healthy budget surpluses and, in 2006, realized revenue approximately 2% more than it anticipated. The Township has maintained an available Cap bank and, according to its FY 2007 budget, has fully funded back payments to firefighters as a result of this unsettled contract dispute. However, the Township's finances are not as robust as claimed by the IAFF. This conclusion is supported by a sharp decrease in the Township's Surplus Balance over the past few years. The previous Township administration "drew down" a

large Surplus Balance that was once as high as \$12,829,836.00 as of June 30, 2003 but decreased to \$3,811,774.00 as of June 30, 2005. The monies were used to offset the level of tax increases. But the use of such a large amount of surplus for that purpose in the past now weighs against the continued use of existing Surplus Balances for the purpose of future tax relief. This requires the Township to rely more heavily on its tax levy to fund current operating expenses. The current administration does not have the sizeable budget cushion than did its predecessor. Fortunately, the State approved the Township's request for \$700,000.00 in Extraordinary Aid thus allowing its overall state aid to remain relatively stable. In 2007 state aid was \$21,508,806.00 compared to \$20,668,443 in 2006. The reduced Surplus Balance, coupled with the uncertainty in the levels of Extraordinary Aid that the Township may receive in the future provides less flexibility to the Township in its requirement to comply with the "Tax Levy Cap" of 4%. This strengthens the Township's position in respect to health insurance changes and cost offsets for new hires. The Award reflects the need for cost containment in these areas. The terms of the Award, as set forth below can be implemented within the Township's financial ability and within its lawful authority.

The last offers of each party, when viewed as a whole, cannot be deemed reasonable. The IAFF seeks similar wage adjustments that were negotiated with the PBA but without any of the health insurance concessions that were included in that settlement. The IAFF also seeks to avoid negotiating any "givebacks" in

existing terms despite the Township's submission of evidence that they have become more commonplace in the public sector generally and also in public safety units. The Township, on the other hand, sees little relationship between changes to be made to the PBA and IAFF agreements, despite the fact that each unit serves, in tandem, to protect the public's health, safety and welfare. The Township also proposes so many concessions of significant value that its position does give rise to the Union's claim that they would fundamentally change the terms of the existing collective bargaining agreement that have been negotiated over many years.

What emerges from the competing criteria is the development of terms that maintains reasonable consistency between the terms of the PBA agreement and the IAFF agreement over the contract period January 1, 2005 through December 31, 2008, that sets new terms for contract period January 1, 2009 through December 31, 2009 (an "out year" for the PBA), and provides reasonable offsets in the future to the costs of these terms. On this latter point, the more recent decreases in surplus balance does establish a basis to modify the existing health insurance program for all employees and to include a new hire package. That package shall consist of a new hire salary schedule, a health insurance program less broad in its options than exists for current employees, and a modification to the existing terminal leave package for new hires in the areas of terminal leave payouts that are linked to accumulated sick leave. The specifics of these terms are follows.

I first address the issue of salary. The respective agreements in the PBA and IAFF units do reflect that the firefighters receive higher annual salaries. The historical basis for this is rooted in the negotiations history between the parties. It can be assumed that the respective terms are a reflection of longstanding relationships that have been built not only into their respective salary guides but also into the overall terms of the respective agreements. There are some differences and some similarities in each agreement. Although there is no evidence tracking the historical basis for the differences and similarities, it is reasonable to presume that the Township and employee organizations have factored into their agreements the relevant considerations that were present in their respective prior negotiations.

The PBA agreement for 2005-2008 shows increases of \$1,500 plus 3.8% in 2005, 3.9% in 2006, 4.0% in 2007 and 3.6% in 2008. The \$1,500 represents approximately a 2% increase. An additional .4% would be added to the schedule in 2008 if sixty percent (60%) of officers who were previously enrolled in the Traditional Plan change their enrollment to either the PPO or POS Plans offered prior to July 1, 2007. 71 of the 118 members of the PBA would have to have switched by July 1, 2007. The record does not reflect whether this threshold has been met. Although there is no evidence of direct parity, subsection (g)(2) warrants that weight should be given to providing a some degree of consistency approach between these two units during the same contract period. I conclude



that wage increases of 3.95% in 2005, 3.95% in 2006, 3.85% in 2007, 3.8% in 2008 and 3.75% in 2009 are reasonable and appropriate. These terms do not directly equate to the percentage terms of increases in the PBA agreement but maintain the relative higher salary levels for firefighters. However, the terms maintain reasonable consistency in the approximate, relative relationship between police and fire that has historically existed and pre-date 2005. The lesser and declining percentages over the years also reflect the financial reality that the Township's fiscal posture is not as strong now as in the years preceding the commencement date of the PBA and IAFF contracts (January 1, 2005) as evidenced by the substantial decline in the Township's Surplus Balance and the stated purpose of the tax levy cap. In respect to external comparables, the 3.86% average, while below the PBA agreement and the averages offered by the IAFF, are generally consistent with the average percentage increases in voluntary settlements and awards that have been submitted into the record. The Firefighter 7 top step will increase from \$81,775 to \$98,824 over the five year life of the Agreement. As stated above, the salary terms do not stand alone. They shall be accompanied by changes in the health insurance program to conform these benefits more closely to the PBA agreement and a "new hire package" that will serve to ease the increasing costs of health insurance and provide cost offsets to the Township for new hires. The continuity and stability of employment for firefighters will be maintained by the terms of the Award and the modified terms and conditions of employment for new hires will remain at an attractive level that will insure a pool of competent candidates. The terms of the Award

have reasonable relationship to the increases in the CPI. The Township estimates the increases as averaging 3.2%. The data submitted on this issue does not warrant terms that vary from those that have been awarded.

The Township has proposed to add three (3) steps to the current salary guide for new hires and a formula for advancement on the guide. I award two (2) steps and the adoption of the Township's proposed formula for guide movement through the salary schedule. The Township has also proposed to freeze the hiring rate at its 2004 level through 2009. There is merit to adjusting the hiring rate at a lesser level than the percentage increases awarded to the salary schedule but not to freeze the rate over the entire five year contract duration. I award no increase in the hiring rate in 2005 and 2006 but award \$500 increases on January 1 of 2007, 2008 and 2009. The maximum Firefighter rate under the new hire salary schedule at Firefighter 9 shall be identical to the Firefighter 7 maximum for existing employees. The revised new hire salary schedule will create substantial savings to the Township in future payroll costs as a new hire will not reach salary maximum for an additional two years beyond the current salary schedule and will receive a lower salary on each step as that employee advances through the extended salary schedule. The net savings of the new schedule to the Township will exceed \$25,000 for each future employee.

The salary increases in the award will, of course, cause economic change in each year of the agreement. Based upon a base salary total of \$7,669,452 in

2004, salary costs for step movement through the guide is estimated at \$484,448 in 2005, \$406,797 in 2006, \$241,410 in 2007, \$188,589 in 2009. These costs are required to be borne under either the proposal of both parties. When the percentage increases in the Award are applied to the salary schedule over the five years, the gross base salaries for the unit would be \$8,480,056 in 2005, \$9,233,400 in 2006, \$9,838,631 in 2007, \$10,409,322 in 2008 and \$10,995,332 in 2009. These costs are cumulative and represent an additional \$65,231 over the Township's proposal in 2005, \$116,094 in 2006, \$165,193 in 2007, \$231,121 in 2008 and \$343,841 in 2009. Measured against the IAFF's proposal, the Award represents similar cost in 2005, \$25,810 less in 2006, \$61,542 less in 2007, \$108,554 less in 2008 and \$172,707 less in 2009. The projected costs cannot be precise due to resignations, hiring, and/or retirements over the contract terms.

There is also merit to the Township's proposals that modify Article 26-Personal Days and Article 23-Vacation Days to prorate such paid leave in the final year of work for the purpose of payout at retirement. But I limit the application of these proposed changes to employees hired after the date of this award. Existing employees have relied upon existing terms upon retirement separation and I do not find it reasonable to alter those terms for current employees. I apply similar reasoning to the Township's proposals that would modify the sick leave accrued benefit program that represents the current terminal leave benefit. Given the existing level of benefits on this issue, a

modification for new hires is reasonable and warranted. I award a modification to the existing sick leave accrual benefit in Article 45 from “up to 2184 hours” to “up to 1092 hours” and to alter the payment of any remaining accumulated sick leave as terminal leave to 50% of the value of those days for employees hired after the date of the award.

An additional modification that has merit, but will not be limited to new hires, is the tuition benefit for employees matriculating towards a degree as provided for in Article 44. It is reasonable to limit the Township’s obligation under this Article to the amount charged by Rutgers University. However, the application of this modification shall not extend to employees who are currently enrolled and presently matriculating towards a degree at an institution that charges an amount above that charged by Rutgers University.

The Township has justified some additional changes in existing contractual terms but not in others. The IAFF estimates that the value of the givebacks exceed the Township’s wage offer over the five years. The proposals have been set forth in the Township’s last offer and also on pages 18 and 19 of this text and need not be restated here. Except for the health insurance modifications that I have award below, I deny the remainder of the Township’s concessionary proposals. They either have not been supported by substantial credible evidence or warrant denial based upon having economic impact to unit employees that would not be commensurate or balanced by the terms of the

overall award. The Township cites the overall compensation and benefits package as a basis for the elimination of many of the existing economic provisions but its burden to delete these items must be met beyond a contention that they represent more attractive terms than those in most comparable agreements. The IAFF does not seek any additions to current overall compensation and benefit levels but the award does implement cost saving changes while maintaining the existing compensation package.

The health insurance proposals of the Township are sustained in part and denied in part. The record reflects that the costs of the Township's health insurance benefit packages have risen significantly and also that employees in all of the Township's other units, including the PBA, have agreed to some measure of employee contribution. Further, the existing prescription co-pay program for the IAFF is by far the lowest in the Township. The IAFF opposes any changes in the level of any of its health insurance benefits or in the level of co-pays. I first address the prescription benefit.

The record reflects that the costs of this benefit to the Township (for all employees) has risen substantially. Between 2001 and 2006 these costs have increased from \$2,128,453 to \$4,267,244, an increase of almost 100%. Currently, the IAFF pays \$3.00 per prescription for both generic and name-brand drugs. Comparisons both within the Township's many bargaining units and in other municipalities reflect that the \$3.00 co-pay for both generic and name

brand drugs is the most favorable co-pay reflected in the record. Given these internal and external comparisons and the doubling of prescription costs to the Township, an increase in the prescription co-pay has been shown to be justified. There are various co-pays within the Township's many bargaining units. These range from \$10.00 name brand for the PBA, \$12.00 name brand for EMTS and \$15.00 name-brand for Crossing Guards and Nurses. I award a \$5.00 co-pay for generic and a \$10.00 co-pay for name brand prescriptions through December 31, 2008 to be effective immediately. I am aware that the PBA agreement provides no co-pay for generic drugs but the increasing cost of this benefit now weighs against having no co-pay. Effective January 1, 2009 the co-pays shall be increased to \$7.50 generic and \$15.00 for name brand. For 90 day mail order, the co-pay shall be 1.5 times the co-pay for a 30 day prescription.

The IAFF also disputes the modifications the Township has proposed to its health insurance program. The Township supports its position by asserting a need to ease the increasing costs it has borne by having the IAFF pay higher deductibles, make premium contributions and to terminate the Traditional Plan. In the absence of premiums because it is self insured, the Township points to the COBRA rates reflecting family coverage costs of \$1,753 for the PPO Plan and \$1,415.51 for the Traditional Plan. It acknowledges that the PPO Plan is its most expensive plan but contends that will be more able to control future costs by obtaining discounts if it can have all employees as participants in the PPO Plan. It further contends that many Township employees make some contributions in

varying amounts towards health insurance including the EMT unit, VAW, the PBA/SOA, Carpenters and L32 Supervisors, AFSCME and its non-union employees.

The Township has met its burden to show that change in the health insurance benefit is warranted. The salary levels for the IAFF are higher than all unionized non-supervisory employees, all whom have agreed to modifications to their health insurance programs. Also, the PBA agreement must be given weight as internal comparability between these public safety units on an issue such as health insurance is appropriate. In the PBA agreement, bi-weekly contributions were required in 2006 for employees choosing to remain in the Traditional plan. The bi-weekly contribution was \$25 in 2006 with increases to \$27 and \$29 in years 2007 and 2008 respectively. Moreover, the Township has supported its position by the submission of recent cost sharing agreements in various municipalities, counties and in the State of New Jersey agreements.

I award a contribution program that is similar to the PBA contract<sup>2</sup>. As soon as is administratively practicable, the Township may institute the \$29 bi-monthly contribution for those who opt for the Traditional Plan for the remainder of 2008. I do not award the Township's proposal to eliminate the Traditional plan for all employees but find merit in its goal to broaden membership in its PPO and

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<sup>2</sup> The PBA agreement provides a "bi-weekly" contribution while the Township's proposal is stated in terms of "bi-monthly" contributions. The Award provides for the contributions to be bi-monthly. To the extent that there is a difference in the contribution level, the difference is minimal and can be addressed in future negotiations.

POS plans. For employees hired after the date of this award, their participation in the health insurance plans will be limited to a selection between the PPO or the POS plans and shall not extend to an option to select the Traditional Plan. There is guidance for this in the most recent agreement between the State of New Jersey and the State Troopers Fraternal Association and in various municipal agreements. I also award an increase in the bi-monthly contribution to \$35 for those employees who choose to remain in the Traditional Plan commencing January 1, 2009. I do not award a monetary incentive for employees to switch from the Traditional plan as was provided in the PBA agreement. The inclusion of co-pays to remain in the Traditional Plan may provide an incentive for employees to voluntarily move to the PPO plan. This issue can be examined at the end of the next contract year when negotiations will commence anew based upon employee options that exist at that time. I also award a continuation of the PPO plan and the inclusion of a new POS plan on the same terms that are provided under the PBA agreement. The specific terms of the overall plan shall conform to the health insurance plan that currently exists in the agreement between the Township and the PBA except for those that differ by the terms of this Award. Accordingly, as soon as is administratively feasible, the Township shall have the authority to implement medical and hospitalization coverage at the following levels for the following plans that the Township shall offer the IAFF:

Plan	Deductible	Coinsurance	Co-pay	Bi-Monthly Contribution	
				2008	2009
Traditional	300/600	80-20	N/A	29.00	35.00
PPO	200/400 (out of network only)	80-20 (out of network only)	\$15.00 (in network only)	0.00	--



POS	1000/2000 (out of network only)	60-40 (out of network only)	\$5.00 (in network only)	0.00	--
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I next turn to the Township's proposals concerning the terms for health insurance for existing employees who retire under the terms of this agreement. Such benefits are set forth in Article 43, Section 6 that states "All health benefits as set forth in this article shall continue in full force and effect for retired employees and their dependents to the extent that the law permits. All health benefits shall continue in force until a deceased employee's spouse remarries and or all dependent children reach the age of twenty-three (23) years."

The reach of this Award cannot extend to employees who have already retired. Instead, it is limited to active employees who have not retired within the meaning of PFRS. Internal comparability with the terms for retirees under the PBA agreement is the factor entitled to the most weight in this proceeding on this issue. The PBA agreement extends through December 31, 2008 and for retirees provides for a 100/200 deductible, 80-20 co-insurance and no co-pay nor bi-weekly contribution for retirees and eligible dependents. It also provides for the same terms as active employees for those who select the PPO and POS plans. Given this, I award no changes for active firefighters who retire through December 31, 2008. commencing January 1, 2009, I award the same level of prescription co-pays as active employees, that is \$7.50 for generic and \$15.00 for brand name drugs. For 90-day mail order, the co-pay shall be 1.5 times the co-pay for a 30-day prescription. For medical/hospitalization I award the identical

terms and schedules set forth above for active employees who opt for the PPO or POS Plan. For those who choose to remain in the Traditional Plan, I award monthly contributions commencing January 1, 2009 at the following levels.

	<u>2009</u>
Single	\$30.00
H&W	\$33.00
P&C	\$36.00
Family	\$40.00

I award no other changes in the welfare and pension benefits for active employees who retire under the terms of this agreement.

Accordingly, and based upon all of the above, I respectfully submit the following award:

## **AWARD**

1. All proposals by the Township and the FMBA 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 or by mutual agreement of the parties.

2. **Duration**

The duration of the Agreement shall be January 1, 2005 through December 31, 2009.

3. **Salary-Article 27**

The Township and the IAFF shall consider deleting the wage scale for employees hired before December 31, 1997 since such employees are at maximum step. The wage scale for existing employees shall, except for the Hiring Rate, be adjusted at each step by 3.95% on January 1, 2005, 3.95% on January 1, 2006, 3.85% on January 1, 2007, 3.80% on January 1, 2008 and 3.75% on January 1, 2009. All increases are retroactive to their effective dates and shall apply to all employees presently employed and those who have retired including those who retired on ordinary or disability pension. The Hiring Rate shall be adjusted by \$500.00 annually on January 1, 2007, an additional \$500.00 on January 1, 2008 and an additional \$500 on January 1, 2009. Effective April 7, 2008 there shall be a new salary schedule for new hires. The structure of the schedule and the timing of movement on that schedule shall be in accordance with the formula set forth in the Township's last offer except that it shall contain two rather than three additional steps, with Firefighter 9 step being the top Firefighter step at the same salary level as Firefighter 7 in the wage scale for employees hired after January 1, 1998.

4. **Recognition/Classification**

The title of "Inspector" shall be modified to "Firefighter/Inspector." This shall not change the qualifications or the requirements that presently exist for employees who occupy the position.

5. **Vacation- Article 23**

For employees hired on or after April 7, 2008, Article 23 shall be modified to state "Unused vacation time shall be prorated in the final year of work for purposes of payout at retirement."

6. **Personal Days- Article 26**

For employees hired on or after April 7, 2008, Article 26 shall be modified to state "Unused personal time shall be prorated in the final year of work for purposes of payout at retirement."

7. **Educational Benefits – Article 44**

Effective on or after April 7, 2008, Section 1 shall be modified to include "in the amount as charged by Rutgers University." Any employee presently attending a school and matriculating towards a degree at an institution charging an amount above that charged by Rutgers University shall be "grandfathered," under the existing terms in Article 44, Section 1.

8. **Sick-Time- Article 45.**

For employees hired on or after April 7, 2008, Section 1 (a) shall be modified to state "up to 1092 hours" and that the remaining accumulated sick leave to be used as terminal leave shall be at 50% of the value of those days.

9. **Welfare & Pension Benefits – Article 43**

Effective as soon as practicable, Section 3 shall be modified to require an employee co-payment of \$5.00 per generic prescription and \$10.00 per name brand prescription. Effective January 1, 2009, these amounts shall be increased to \$7.50 and \$15.00 respectively. For 90 day mail order, the co-pay shall be 1.5 times the co-pay for a 30-day prescription.

Effective on or after the date of this Award, new hires shall be provided with a doctor/hospitalization plan limited to the PPO or POS plans at their option.

The Major Medical and Hospitalization Plan, effective as soon as is practicable, shall be modified to provide for the following terms:

Plan	Deductible	Coinsurance	Co-pay	Bi-Monthly Contribution	
				2008	2009
Traditional	300/600	80-20	N/A	29.00	35.00
PPO	200/400 (out of network only)	80-20 (out of network only)	\$15.00 (in network only)	0.00	0.00
POS	1000/2000 (out of network only)	60-40 (out of network only)	\$5.00 (in network only)	0.00	0.00

10. **Welfare & Pension Benefits – Article 43, Section 6**

Commencing January 1, 2009, presently active firefighters who retire during the term of this agreement shall have a prescription co-pay of \$7.50 for generic and \$15.00 for name brand drugs. For 90-day mail order, the co-pay shall be 1.5 times the co-pay for a 30-day prescription. For major medical/hospitalization, benefits shall be set at the same level set forth for active employees who are in the PPO and POS Plans with employee contributions. For those who choose to remain in the Traditional Plan, I award monthly contributions commencing January 1, 2009 at the following levels.

	<u>2009</u>
Single	\$30.00
H&W	\$33.00
P&C	\$36.00
Family	\$40.00

Dated: April 7, 2008  
Sea Girt, New Jersey

  
James W. Mastriani

State of New Jersey       }  
County of Monmouth       }ss:

On this 7<sup>th</sup> day of April, 2008, 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 8/13/2009