

In the Matter of Interest Arbitration Between:

TOWN OF KEARNY

“Employer,”

- and -

FMBA LOCAL 18

“Union.”

**OPINION
AND
AWARD**

Docket No. IA-2008-021

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Frederick T. Danser, Esq.
Apruzzese, McDermott, Mastro
& Murphy, P.C.

For the Union:

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

I was designated by the New Jersey Public Employment Commission to serve as interest arbitrator after the Town of Kearny [the "Township"] and FMBA Local 18 [the "Union" or "FMBA"] reached an impasse in negotiations. Mediation sessions were conducted on January 10 and April 2, 2008. Because the impasse remained, a formal interest arbitration hearing was held on September 26, 2008, at which time testimony and documentary evidence were submitted into the record. Post-hearing briefs were filed on or about September 1, 2009. Additional post-hearing submissions were received on April 22 and May 7, 2010. Because the parties did not agree on an alternative terminal procedure, the terminal procedure shall be conventional arbitration under which the arbitrator has the discretion to render an award that is not confined to the last offers of either party.

As required by statute, each party submitted a final or last offer. They are as follows:

FINAL OFFER OF THE TOWN OF KEARNY

1. Term of Agreement. The Town proposes a 4-year term from July 1, 2007 to June 30, 2011.
2. Article 7 – Wages
 - A. There shall be general wage increases as follows:
 - Effective 7/1/07 – 3.25%
 - Effective 7/1/08 – 3.25%
 - Effective 7/1/09 – 3.25%

Effective 7/1/10 – 3.25%

B. Section 5 of Article 7 shall be modified to provide:

“For purposes of salary progression a new employee shall remain at the academy rate for the first 4 months of active employment. Thereafter, the new employee shall move to the probationary rate for the next 52 weeks of active employment. Upon successful completion of this 52-week probationary period, the employee will move to Step 1 of the Salary Guide the next pay period.”

C. Section 6 of Article 7 shall be modified to provide:

“Upon completion of the salary progression set forth in Section 5, all step increases thereafter shall be effective July 1, except that there must be a period of at least 8 months between the time of movement to Step 1 and the time of movement to Step 2.”

3. Article 8 – Insurance

Section 1 shall be modified to provide:

“The Town agrees to provide medical coverage for all employees and their dependents in accordance with the terms and conditions and definitions of the policies of insurance set forth in the New Jersey State Health Benefits Plan as those plans may be amended or modified. Effective January 1, 2009, employees who are in the Direct 10 Plan will pay the difference in cost between the Direct 10 and the Direct 15 Plans by way of payroll deduction. Effective January 1, 2010, employees shall contribute 1.5% of salary by way of payroll deduction to the cost of premium for this medical insurance.”

Section 2 shall be modified to provide:

“The Town further agrees to provide medical coverage to all retired employees who have been, prior to retirement, employees covered by this agreement and their dependents in accordance with the terms, conditions and definitions of the policies of insurance set forth in the New Jersey State Health Benefits Plan as those plans may be amended or modified. For eligible employees who retire on or after July

1, 2007 the Town will continue to reimburse Medicare Part B at the cost in effect as of 7/1/07, and the retiree shall pay all increases in that cost from July 1, 2007 forward.”

Section 4 shall be modified as follows:

“The Town shall continue to provide a prescription plan for all active employees and eligible retirees and their eligible dependents through the New Jersey State Health Benefits Plan as those plans may be amended or modified. Employees shall be responsible for all co-payments required under the terms of the Plan as it may be modified. Further, reference to specific co-payments in the current contract shall be removed and reimbursement by the Town shall terminate as of the date of agreement or award.”

4. Article 14 – Leaves of Absence

Section 6 shall be modified so that the first sentence shall state:

“Each member covered by this Agreement shall be entitled to and granted terminal leave upon regular retirement after 25 years or more years of service in the Police and Fire Retirement System (PFRS).”

5. Article 15 – Vacations

Modify to include the agreed upon carryover provisions for vacation and add language to provide that any such vacation carried over shall be used within the first three months of the following calendar year.

6. Article 16 – Sick Leave

Section D3 to be modified as follows:

“After four sick leave occurrences in a rolling 12-month period for non-24 hour employees and three sick leave occurrences for 24-hour employees, where an occurrence is defined as continuous leave of absence resulting from an incident or occasion which resulted in illness, injury, accident and/or exposure to contagious disease.”

7. Grievances

All pending grievances shall be withdrawn with prejudice.

FINAL OFFER OF THE FMBA

1. **Five (5) Year Contract** – The FMBA contract expired on June 30, 2007. The proposed contract would be effective from July 1, 2007 through June 30, 2012.

2. **Salary Increases** – The FMBA is seeking the following increase for each year of the proposed contract.

July 1, 2007: 4.5% plus 2% parity payment
July 1, 2008: 4.5% plus 2% parity payment
July 1, 2009: 4.5% plus 2% parity payment
July 1, 2010: 4.5% plus 2% parity payment
July 1, 2011: 4.5% plus 2% parity payment

3. **Senior Duty Differential.** The FMBA is seeking to implement a Senior Duty Differential for those members who have completed a specific number of years as a Firefighter. The FMBA requests the following additional payment, in base pay, upon completion of the following years of service with the Town: 1.5% - 15 years; 3% - 20 years.

4. **Night Differential.** The FMBA is seeking to implement a night differential payment. This payment should be incorporated into base pay. A number of other Fire Departments already receive this payment. The PBA also is provided a night differential payment. Therefore, we are seeking a payment in the amount of .6% which is the same payment PBA members receive under the muster time pay allowance.

5. **Clothing Allowance.** The FOA, PBA and SOA continue to receive clothing allowance stipends. The FMBA no longer receives this stipend. By way of background, the stipend was eliminated and replaced with a direct exchange program, whereby clothing orders/repairs are ordered through the mail. To date, this program has been ineffective. The FMBA is, therefore, seeking to eliminate this program, which is currently paid for through a line item in the Fire Department Budget. This program should be eliminated effective June 30, 2009. Thereafter, effective July 1, 2009, the FMBA should be provided an annual \$1,000 clothing allowance, as is currently provided to the PBA.

6. **Widow's Benefits.** Currently, all FMBA surviving spouses are required to pay the full cost of health benefits, which include health insurance premiums, Medicare and prescription drug costs. Currently, the PBA receives full surviving spouse benefits, whether the PBA member dies while actively employed as a police officer or during retirement. The FMBA is seeking to incorporate the same benefit into its collective bargaining agreement for its employees.

7. **Article III – Conducting FMBA Business on Town Time, Section 4.** Currently, three (3) employees are granted time off from their work assignments, with pay, for four (4) collective bargaining sessions. Any additional time off is not with pay so that employees need to use their accrued time or covers to attend collective bargaining sessions. This restriction should be eliminated so that the three designated employees are allowed time off, with pay, to attend all collective bargaining sessions. This is necessary because of the history of lengthy negotiations between the parties. These designated employees cannot adequately represent their members if they are not afforded the opportunity to attend all collective negotiations sessions.

8. **Article X – Holidays.** Pursuant to Section 5 of the FMBA contract, holiday pay was rolled into base pay effective July 1, 2003. 168 hours of holiday pay were rolled into base pay. Prior to this contract, FMBA members received premium holiday pay on certain holidays. This concept is reflected in the FOA contract where 188 hours of holiday pay were rolled into base pay. Accordingly, the FMBA should, at the very least, receive an increase in the holiday pay so that 188 hours of holiday pay are rolled into base pay.

9. **Article XIV – Leaves of Absence**

Section 3. The FMBA is seeking to include the following individuals within the current bereavement leave policy: children's grandparents, brother-in-law and sister-in-law. The FOA and PBA receive this benefit.

Section 6. The current terminal leave calculation causes an inequity for day workers. This policy should be revised to reflect the terminal leave language set forth in the FOA's collective bargaining agreement.

10. **Article XV – Vacation**

- a. The FMBA is seeking to increase its vacation day benefit by one 24-hour shifts for all firefighters assigned to the 24 hour tour. The day workers, who work 10-hour days, are seeking to increase their vacation benefit by 2 10-hour shifts. As set forth in the current PBA and SOA contracts, all members that have completed three years of service are entitled to 29 vacation days, or 232 hours of vacation time if broken down into hours. Members of the FMBA who have completed the same three years of service are only entitled to eight 24-hour vacation days, or 192 hours of vacation time. It should also be noted that PBA members receive an additional holiday for their birthday. Based on the foregoing, the FMBA should receive the same benefit to help bridge the gap between the police and fire salary and benefit package.
- b. **Section 2, Subsection E.** Prior to the implementation of the 24/72 shift, employees worked the 10/14 shift. When the 10/14 shift was in effect, FMBA members were entitled to 1 additional vacation day for every 5 years. When converted to hours, that benefit amounted to 60 additional hours of vacation time in the 25th year of service. After the 24/72 shift was implemented, the above language changed so that FMBA members were only entitled to 1 additional vacation day for every 10 years. Although the conversion was not supposed to decrease the vacation day benefit, the language change amounted to a reduction in benefits in that members were only entitled to 48 hours of additional vacation time in the 25th year of service. The FMBA is seeking to revise this language to reflect the prior practice, meaning that FMBA members would be allotted 12 vacation hours for every five (5) years of service. The PBA is currently provided this benefit through their collective bargaining agreement. The FMBA is seeking to use the additional hours of vacation time as emergency vacation days (“EVD”). This portion of the proposal is especially reasonable since the PBA, pursuant to Article XIII, is allowed to use 12 vacation days as EVD's.

11. **Article XVI – Sick Leave** - Withdrawn

12. **Out of Title Pay**

The Inspector of Combustibles should be provided out-of-title pay when required to perform duties of the Chief Inspector of Combustibles.

13. **Differentials for Employees Assigned to the Day Shift.**

The FMBA is seeking a 10% differential between the rank of a top pay rank-and-file Firefighter and the Fire Prevention Specialist (Inspector of Combustibles). In addition, the FMBA is seeking to set forth the current differentials for the Mechanic and the Chief Inspector of Combustibles in the CBA.

14. **Special Payments.** The FMBA is seeking a 2% payment for the performance of First Responder Duties. The FMBA is also seeking a \$1,500 payment for the performance of Hazmat and Technical Rescue duties.

15. **Military Leave Time**

The FMBA proposes to include the state, federal, and local policies and practices in the Agreement.

Non-Economic

1. **Article VIII, Insurance Programs, Section 3.** FMBA members receive dental benefits from the Town. Although this benefit was modified during the negotiations of the last CBA, the FMBA did not agree to remove language pertaining to dental benefits for retirees. Accordingly, the FMBA is seeking to reinsert the retiree dental benefit language in the CBA.
2. **Article X, Holidays.** The FMBA is seeking to incorporate language into the CBA which sets forth the current practice regarding holidays for day workers.
3. **Article XI, Overtime.** The FMBA is seeking to require the Town to generate an overtime list in each Fire House.
4. **Article XII, Hours, Section 6.** The FMBA is seeking unlimited covers.
5. **Article XII, Hours, Section 7.** Currently, probationary Firefighters are not eligible for "covers" until forty-five (45)

days after completion of their fire academy training. This limitation should be removed from the CBA.

6. **Article XII, Hours.** The current work schedule of the Inspector and Chief Inspector should be clarified in the CBA to accurately reflect the current schedule of said positions.
7. **Article XV, Vacation.** The FMBA is seeking the ability to split their vacation days.
8. **Article XXI, Grievance Procedure.** The FMBA is seeking to implement (i) a new provision which allows the FMBA to move to the next step of the grievance procedure when Town Officials fail to respond to the grievance; (ii) revise the definition of grievance to include safety related concerns; (iii) an increase in the amount of time to initiate a grievance from 10 to 30 days after the incident, as well as 30 days to initiate a grievance after a new hire is assigned to a fire house; and (iv) the Town bears the cost of arbitration if Town Officials fail to respond to the grievance in writing.

In addition to the above, the FMBA is also seeking to revise the above provision so that new hires have additional time to file a grievance.

9. **Article XXXII, Policy Determinations, Section B.** The FMBA proposes to include language which would allow FMBA members to receive, at the option of the Town, payment for all carried over vacation time at straight time or, in the alternative, the ability to carry over all unused vacation days at the end of the calendar year.
10. **New Provision.** The FMBA is seeking to incorporate a new provision into the Agreement which would allow Firefighters to work 48 consecutive hours.

BACKGROUND

The Town of Kearny is one of twelve (12) municipalities in Hudson County and is situated in an area that is commonly referred to as "West Hudson." It has a population of approximately 40,000 residents. The municipality is

predominantly residential but it houses a vibrant business district and large areas of commercial and industrial property. The fire department contains two bargaining units. This unit represents firefighters. There are 66 firefighters in the Kearny fire department. There is another unit consisting of fire superior officers.

As is obvious from a review of the parties' final offers, these negotiations have been complex and encompass many economic and non-economic issues. Because of this, the record is extensive. It includes data concerning the entire financial profile of the Town including official budget documents and comprehensive financial analyses, interest arbitration awards and labor agreements from many municipalities with emphasis on paid fire departments, internal labor agreements between the Town of Kearny and its six unions with accompanying arguments as to the relevance of the specific terms of those agreements. The parties also submit voluminous evidence touching upon the statutory criteria with extensive argument as to the relevance and weight to be given to the statutory criteria. Hundreds of exhibits are included in the record.

Given the above, a general summary of the evidence and arguments must give way to an approach that pinpoints the evidence and arguments that are specific to the dozens of issues in dispute. For this reason, I will proceed to examine these issues one by one and then move to an analysis that includes the award.

Article 7 - Wages

The Town proposes the following wage increases:

- A. There shall be general wage increases as follows:

Effective 7/1/07 – 3.25%

Effective 7/1/08 – 3.25%

Effective 7/1/09 – 3.25%

Effective 7/1/10 – 3.25%

- B. Section 5 of Article 7 shall be modified to provide:

“For purposes of salary progression a new employee shall remain at the academy rate for the first 4 months of active employment. Thereafter, the new employee shall move to the probationary rate for the next 52 weeks of active employment. Upon successful completion of this 52-week probationary period, the employee will move to Step 1 of the Salary Guide the next pay period.”

- C. Section 6 of Article 7 shall be modified to provide:

“Upon completion of the salary progression set forth in Section 5, all step increases thereafter shall be effective July 1, except that there must be a period of at least 8 months between the time of movement to Step 1 and the time of movement to Step 2.”

The Town contends that the Union’s salary proposal is not defensible and noting that its wage offer was developed during the summer of 2008 prior to what it terms the “cataclysmic events of the fall of 2008.” The Town sees the possibility that its own proposal could be criticized by the taxpayers given the deep recession in the fall of 2008.

The Town submits that its proposal is reasonable and should be awarded.

The Town provides a detailed analysis reflecting this view:

With a proposed across the board (ATB) increase of 3.25% this exhibit shows an increment cost in year one (July 2007 to June 2008) of slightly more than 6%. For the 28 employees in the step progression the Town's salary translates to the following total (ATB and increment) dollar increases per employee in the respective steps:

1.	Academy to Probation	-	\$7,184
2.	Step 1 to Step 2	-	\$16,088
3.	Step 6 to Step 7	-	\$4,333
4.	Step 7 to Step 8 (max.)	-	\$13,488

The employees at maximum will each receive an increase of \$2,710.00 to their base under the Town's proposal. These increases provide additional financial enhancement to the employee recipients on both a short term and long term basis. Of immediate benefit to the firefighters is the increase to their annual base salary plus an increase in the rate of overtime compensation. On a longer term basis (translated to the rest of their lives) the salary increase enhances their pension. Thus, a firefighter who retired in 2007 would receive a retroactive adjustment to his pension based upon the \$2,710.00 base salary increase provided for in the Town offer that would amount to an additional \$1,760.00 per year of pension payment at a 65% of salary rate. Given extended life expectancies in today's society it is not unreasonable to assume 20 years of enhanced pension costs or \$35,200.00 more income to the employee and cost to the taxpayer that a 3.25% increase effective July 1, 2007 will produce.

The FMBA says such an increase is not sufficient. Instead, the Union says the increase should be 6.5% on 7/1/07 plus Haz Mat pay of \$1,500 and First Responder pay of 2% plus an additional 20 hours of holiday pay. When all of these items are totaled the maximum salary increases from \$83,385.00 as of June 30, 2007 to \$93,176.00 as of July 1, 2007 or \$9,791.00 more for the first contract year. Using the same pension assumptions as set forth above, this increase would result in a pension enhancement of \$6,364.00 which multiplied by 20 years produces a benefit cost of \$127,283.00 and this is just the pension cost consequence of a one-year salary increase. The full impact of the Union's proposal is the new maximum salary of \$93,176.00 which produces a life time

pension benefit of \$60,564.00 per year. Using the same 20 year assumption the remaining life time benefit is \$1,211,288.00 (See T-173 and 174).

Returning to the cost of the Town's proposal Exhibit T-172 shows an increment cost for the second year of the contract at just under 3% and a total cost (ATB + increment) of 6.18% exclusive of the Mechanic and Chief Inspector.

In year 3 of the contract the total cost of the Town's offer exclusive of Mechanic and Chief Inspector, is 5.56% which must be adjusted downward by ¾ of 1% to accommodate the proposed employee contribution of 1.5% of salary for premium health care cost effective January 1, 2010. The net cost increase of the Town's offer in the third year would be 4.81%. If the mid-year contribution to health insurance is only applied to the ATB, the result is a net gain to the employee at maximum of 2.5% (3.25% - .75%) and to employees in the steps of 2.5% plus increment.

The 4th year gain under the Town's proposal is 4.43% but on a net basis the gain is 3.68%, thereby accounting for the remaining ¾ of 1% for the proposed health benefit contribution. Once again, applying the health benefit contribution sought by the Town against the ATB produces a net gain of 2.5%.

Before commenting upon the total cost of the Town's final offer the attention of the arbitrator is called to a correction in the stated salaries for the Mechanic and the Chief Inspector. In essence the stated salary levels for those two titles need to be moved one column to the right starting with the 2007/2008 cost column which should show \$106,305 for Mechanic and \$115,526 for Chief Inspector. When these adjustments are made they produce the following results:

	7/07-6/08	7/08-6/09	7/09-6/10	7/10-6/11
Mechanic	106,305	109,760	113,327	117,010
Chief Inspector	115,526	119,281	123,158	127,160
Grand total	5,161,245	5,473,907	5,772,811	6,025,814
\$over prior year	428,060	312,662	298,904	253,003
% over prior year	9.04%	6.05%	5.46%	4.38%

The total increase from 2007 to 2011 based upon the Town's proposal is \$1,292,629.00 or 27.31% or 6.8% per year over the 4-year term proposed by the Town. To be sure this cost includes the

cost of increments as well, but that does not alter the fact that the cost to the taxpayers of Kearny is almost 7% per year.

By contrast the 5-year proposal made by FMBA Local 18 results in a 63% increase over the base year cost for July 2006 thru June 2007, and a dollar cost increase of \$2,981,971.00. Even the increases proposed by the Union during the first 4 years of its final offer produce a cost increase of 53.2% or \$2,518,992.00. Thus, when comparing apples to apples the 4 year costs of the respective proposal shows the FMBA proposal to exceed the proposal from the Town by \$1,226,363.00. The contrast in the average cost per employee per year over the 4 year period is also dramatic and is set forth as follows:

FMBA Local 18 four year proposal:

7/10 to 6/11 Cost	\$7,252,177
7/06 to 6/07 Cost	<u>\$4,733,185</u>
	\$2,518,992 ÷ 66 employees = \$38,166 per

employee over 4-year term of contract ÷ 4 years = \$9,541 per employee per year.

Town of Kearny four year proposal:

7/10 to 6/11 Cost	\$6,025,814
7/06 to 6/07 Cost	<u>\$4,733,185</u>
	\$1,292,629 ÷ 66 employees = \$19,585 per

employee over 4-year term of contract ÷ 4 years = \$4,876 per employee per year.

In view of the unprecedented economic difficulties confronting our society as a whole and the Town of Kearny and its citizens in particular the final proposal committed to by the Town is very generous and certainly fair to the fire fighters represented by FMBA Local 18. Whether the taxpayers of Kearny think they are getting a fair shake based on the cost to them of the Town's final offer is speculative at best. What is not speculative is the outrage that would be felt by the public if the FMBA proposal or anything close to it were to be awarded.

The Town further submits that its proposal is consistent with agreements it has struck with six other bargaining units within the Town:

The Town of Kearny has six collective negotiation agreements and a seventh that will be a new contract with Deputy Police Chiefs when it emerges from that interest arbitration process. A summary of these contracts follows:

(a) Town of Kearny and Association of Department Heads and Assistant Department Heads – 1/1/09 through 12/31/12 with general wage increases of 3.25% per year. (T-167)

(b) Town of Kearny and Kearny Civil Service Council 11 – 1/1/08 through 12/31/11 with general wage increases of 3.25% per year. (T-167a)

(c) Town of Kearny and Kearny PBA Local 21 – 1/1/09 through 12/31/12 with general wage increases of 3.25% per year. (T-167b)

(d) Town of Kearny and Kearny Police Superior Officers Association – 1/1/09 through 12/31/12 with maintenance of existing rank differential which translates to the same general wage increases of 3.25% per year. (T-167c)

The FMBA has proposed the following increase for each year of the proposed contract.

July 1, 2007: 4.5% plus 2% parity payment
July 1, 2008: 4.5% plus 2% parity payment
July 1, 2009: 4.5% plus 2% parity payment
July 1, 2010: 4.5% plus 2% parity payment
July 1, 2011: 4.5% plus 2% parity payment

In support of this proposal, the FMBA explains the basis for the awarding of this proposal:

The FMBA's salary proposal, which is higher than the Town's Final Offer, is justified based on the record in this Interest Arbitration, including, *inter alia*, the following facts: (1) The FMBA's Financial Expert submitted a Financial Report regarding the Town's sound fiscal condition and its ability to pay for the FMBA's proposals; (2) The "norm" in negotiated and/or awarded salary increases for Police and Fire employees inside and outside of Hudson County; (3) Firefighters perform comparable public safety functions to Kearny Police Officers, yet work more hours per

year than Kearny Police Officers; (4) Police Officers receive a salary that is substantially greater than the salary received by members of the FMBA; and (5) the Town provided the PBA a 3.9% increase in the 2007 and 2008 calendar years plus .6% muster pay for a total of 4.5% for each year, whereas the Town is only offering 3.25% for the 2007 and 2008 calendar years of the proposed CBA. Of course, as previously noted, the recent PBA Kearny agreement, which includes, of course, the annual .06 "automatic" increase for the following raises: 2009, 3.85%; 2010, 3.85%; 2011, 3.85%; 2012, 3.85%.

As demonstrated by the FMBA Financial Expert, Dr. Caprio, the Town of Kearny is fiscally sound and can, in fact, provide the FMBA with the percentage increase requested, as well as the other increases in payments that were requested in the FMBA's Final Offer.

The salary percentage increases offered by the Town are considerably lower than the "norm" of recent Police and Fire CBA's which were voluntarily settled and those where an Interest Arbitration Award was rendered. **See IR 4 - IR 12 and FMBA Exhibit 5.**

More importantly, however, the FMBA's Final Offer for annual salary increases is appropriate whereas here the FMBA demonstrated that the Kearny Firefighters are substantially behind Kearny Police Officers in terms of salaries and fringe benefits.

As noted above, all members of the PBA received a 3.9% increase in the 2007 and 2008 calendar year plus .6% muster pay for a total of 4.5%. That means that, the monetary dollar amount of their raises on all they receive for 2007 when adding in other creditable compensation received, as compared to 2006, by way of increases, if applied to FMBA total salaries would be about 5½%. The same would be true for 2008.

Also, as previously noted, the newly negotiated police raises from 2009-2012 are 3.85% (3.25% plus .6% muster pay) for each year of the four years. Also, the police do not pay a contribution to health benefit premiums but do have the option of switching from Direct 15 to Direct 10 by paying the difference, an alternative, strangely, not offered here!

The FMBA is seeking the above increases, in part, because of the lack of parity between the Town's Firefighters and Police Officers. Specifically, effective July 1, 2006, a top grade Firefighter received total compensation in the amount of \$83,385. The total compensation is inclusive of all creditable compensation.

Police Officers, however, effective calendar year 2007, received the approximate total compensation of \$100,089.60 at top pay. That figure includes clothing allowance payments, holiday pay, muster pay, longevity pay (12% at top pay) and night hazard pay (There are no such comparable payments for members of the FMBA).

The total salary differential between top grade Firefighters and Police Officers is approximately \$16,704.60. It is critical to also emphasize the difference in the salary guide structure. Although the Police Officers CBA provides for a two-tier salary schedule, depending upon the year of hire, there are only five or six (6) salary steps set forth in the PBA CBA, in comparison with the FMBA CBA, which provides for ten (10) steps, which is inclusive of the Academy and Probationary Step.

Please note, there is no such comparable Academy or Probationary Step set forth in the PBA CBA. Accordingly, the starting salary for a Police Officer in the Town for the 2007 calendar year was \$35,808, whereas the starting salary for a Firefighter going through the Academy was \$25,629, a total difference of \$10,179 in starting salary. The salary for probationary Firefighters, after four (4) months of hire is increased to \$31,780. The total Academy and Probation Step takes more than one (1) year to complete.

For all of the reasons set forth above, it is evident that the proposed percentage increases set forth above, as well as the parity adjustments for the 5 years of the proposed CBA, is reasonable and should be awarded. As has been the case in other large, urban communities like Kearny, these Firefighters should receive a special parity increase to help bridge the gap between police and fire salaries within the Town. It is critical to note that the parity payments will not close the gap in salary between the Kearny PBA and FMBA. They will, however, be a step in the right direction for bridging that gap.

Kearny, therefore, in terms of not having parity between police and fire employees shows the highest difference between the two public safety employee units in virtually any other community since the distinction beginning July 1, 2007 (without a 2007 percentage adjustment across the board increase for Firefighters) is \$16,704.60. This does not take into account the greater difference in the hourly rate of pay, which results because, as set forth in other Exhibits submitted in this Interest Arbitration, of the great distinction between the higher number of hours (42) weekly worked by Firefighters as compared to Police Officers.

The norm in the State is actual parity even though in places like the City of Newark, Firefighters receive higher pay than Police Officers. In Newark, the pay in base payments is about 2% higher for Firefighters reflecting the higher number of hours worked and other factors.

As previously noted, the ordinance, which is attached to the FMBA revised Final Position, shows the actual pay inclusive of the .6% annual muster pay from previous years for police employees through 2008 and shows the maximum in 2007 of \$80,497. Strangely, however, the police CBA salary schedule shows a 2007 maximum salary, apparently without muster pay from previous years, of \$78,593 instead of the ordinance amount of \$80,497. This distinction may be inadvertent or willful but whether it is either one or the other, it highlights the huge disparity and demonstrates that every across-the-board increase such as 3.9% in 2007

is really 4.5% with the addition of the .6% muster pay. See Schedule A which refers to IR 2.

The FMBA also demonstrated that the PBA receives greater benefits in other areas such as clothing allowance, night differential pay, health benefits (Widow's Benefits), and Vacation. The Town's salary proposal, if awarded, will cause an even greater salary disparity between the Kearny Firefighters and Kearny Police Officers. The Town's Final Offer will also cause the Kearny Firefighters to lag even further behind other State of New Jersey paid Fire Departments in terms of salary and benefits.

In this instance, in order to close this gap, the Award must allow the FMBA to "close the gap" between it and the Kearny PBA. Peer parity must be restored. Kearny is one of the few municipalities that does not maintain peer parity in terms of salaries and benefits paid to its police and fire employees. Listed below are a few examples of comparable urban/suburban municipalities which have a historical pattern or negotiating history of wage parity among their police and fire employees:

1. Linden
2. Union
3. Elizabeth
4. Montclair
5. Orange
6. Newark (higher than police)
7. Carteret
8. Belleville
9. Bayonne
10. West Orange
11. Maplewood
12. Jersey City
13. Long Branch
14. Harrison

See FMBA Exhibit Nos. 16-22.

The concept of peer parity has been discussed in a number of interest arbitrations involving public safety unions. Arbitrator Robert E. Light, in a Plainfield Interest Arbitration Award, awarded the FMBA the same salary and benefit package that had previously been awarded to the PBA based upon the concept of peer parity. See FMBA Exhibit No. 21. This concept has been relied on in a number of other situations in providing salary and fringe benefits to police and fire employees. Similar awards were rendered in the past to other unions based upon what other public safety unions received in the municipality in question. See FMBA Exhibit No. 16-22. This concept was more recently confirmed in Passaic and in Long Branch. See FMBA Exhibit Nos. 18-19.

Based upon the foregoing, the FMBA should receive the salary increase and parity adjustment it is seeking in this Interest Arbitration

Article 8 – Insurance

The Town has proposed the following modifications to Article 8 –
Insurance:

Section 1 shall be modified to provide:

“The Town agrees to provide medical coverage for all employees and their dependents in accordance with the terms and conditions and definitions of the policies of insurance set forth in the New Jersey State Health Benefits Plan as those plans may be amended or modified. Effective January 1, 2009, employees who are in the Direct 10 Plan will pay the difference in cost between the Direct 10 and the Direct 15 Plans by way of payroll deduction. Effective January 1, 2010, employees shall contribute 1.5% of salary by way of payroll deduction to the cost of premium for this medical insurance.”

Section 2 shall be modified to provide:

“The Town further agrees to provide medical coverage to all retired employees who have been, prior to retirement, employees covered by this agreement and their dependents in accordance with the terms, conditions and definitions of the policies of insurance set forth in the New Jersey State Health Benefits Plan as those plans may be amended or modified. For eligible employees who retire on or after July 1, 2007 the Town will continue to reimburse Medicare Part B at the cost in effect as of 7/1/07, and the retiree shall pay all increases in that cost from July 1, 2007 forward.”

Section 4 shall be modified as follows:

“The Town shall continue to provide a prescription plan for all active employees and eligible retirees and their eligible dependents through the New Jersey State Health Benefits Plan as those plans may be amended or modified. Employees shall be responsible for all co-payments required under the terms of the Plan as it may be modified. Further, reference to specific co-payments in the current contract shall be removed and reimbursement by the Town shall terminate as of the date of agreement or award.”

The Town submits the following argument on behalf of its health insurance proposals:

The Town also asserts that it is in the interests and welfare of the public to provide its paid firefighters with health benefits but that reasonable cost containment provisions should be attached to those benefits to balance the interests of the firefighters in having such benefits with the interest of the taxpayer in having some offset to their total cost and the escalation of that cost. The proposal from the Town introduces cost containment provisions for health insurance in a very moderate way. This contract begins July 1, 2007. No cost containment is even proposed by the Town for the first 18 months of the new contract, and then, as of January 1, 2009, there is still no cost to the employee if the employee exercises the option to have coverage provided under the Direct 15 Plan. Only as of January 1, 2010 is a direct contribution of 1.5% of salary proposed by the Town and by that time firefighters will be enjoying the benefit of 9.75% compounded wage increases which more than adequately provides the means to pay the contribution cost. It is noted that the proposal for contribution to health benefit cost has been on the table since the commencement of negotiations between the Town and FMBA Local 18, and that proposal is still there because negotiations and mediation did not result in settlement of a new contract. Negotiations with the other unions representing Town employees (Police, Police Superiors, Department Heads, CS 11) did result in settlements that included the cost containment of "pay up" for Direct 10. FMBA Local 18 chose not to settle but rather to advance a multitude of proposals for decision in the interest arbitration process and by so doing exposed its membership to the potential of an award that will require those members to pay 1.5% of their salary to offset the cost of health insurance benefits. In any event the Town submits that its proposal for cost containment on health insurance coverage is moderate in scope and timing of implementation and thus strikes a reasonable balance between the interests of the firefighter in maintenance of health benefits and the taxpayers who underwrite the cost of those benefits.

In addition to the above, the Town submits that the announced increase in premium cost for the SHBP will approximate 18% as of January 1, 2010. It views

this fact as emphasizing the need for a contribution to help offset substantial cost increases. The Town also submits data reflecting the private sector experience with health insurance contributions.

Perhaps even more interesting is the BLS data in Exhibit T-160 that shows 77% of private sector employees are required to contribute for single coverage and 87% are required to contribute for family coverage on a nationwide basis and 74% and 83% respectively of private sector employees contribute in the mid-Atlantic region.

On a nationwide basis the average monthly contribution for single coverage is \$87.69 or \$1,052. per annum and \$330.99 per month for family coverage or \$3,971 per year. As previously noted, firefighters in Kearny make no contribution at present to the cost of their health insurance and do not yet even have a financial obligation to pay the cost difference of the more expensive Direct 10 plan.

The FMBA urges rejection of the Town's health insurance proposals. It submits lengthy argument on behalf of its position:

A. Section 1 of Article 8. The Town is seeking to, among other things, require employees to pay the difference in cost between the New Jersey State Health Benefits Plan Direct 10 and Direct 15 by way of payroll deductions effective January 1, 2009. Additionally, the Town is seeking a 1.5% contribution of salary by way of payroll deduction to the cost of the premiums for medical insurance.

The above-requested proposals should not be awarded especially in light of the fact that a large number of municipalities do not require their employees to contribute to health care insurance. In that regard, the following municipalities are examples of municipalities that do not require their employees to contribute, in any capacity to health care insurance: Trenton, Elizabeth, Westfield, Linden, Cranford, Union, Summit, Roselle, New Brunswick, Lakewood, Toms River, Hamilton, Jackson, South Brunswick, Ewing, Lawrence, Neptune, Jersey City, Paterson, Hoboken, Passaic, Bloomfield, Montclair, Clifton, Harrison, North Hudson, West Orange, Belleville, South Orange, Teaneck, Nutley, Morris, Madison, Margate, Vineland, Wildwood, Gloucester, Bridgeton, North Wildwood, and Woodbury.

With respect to the Town's request that Firefighters pay the difference between the Direct 10 and Direct 15 plan, the FMBA concedes the fact that all Police Officers and Council 11 employees agreed to the implementation of this aspect of the health benefits proposal. Notwithstanding the fact that certain other employee organizations agreed to the implementation of this aspect of the proposal, it is critical to note that the PBA receives substantially greater salaries and other economic and non-economic benefits, and as such, the FMBA should not be required to contribute to any difference in cost between the above-referenced plans. This is especially true when reviewing the above-referenced examples of municipalities that do not require their employees to contribute to any health benefit costs.

With respect to the Town's proposal to implement a 1.5% contribution to medical benefits for all employees, it is critical to note that no other Union within the municipality contribute to the cost of premiums attributable to health care costs. This is especially pertinent since the Town entered into successor agreements with the PBA, PSOA and Council 11 in March 2009.

As noted above, and as noted in various Exhibits, FMBA members perform dangerous and labor intensive job duties, and as such, Firefighters should not be required to make any form of contribution to health benefits in this Interest Arbitration. Contrary to the Town's position, Firefighters cannot be appropriately compared with private sector employees given the substantial risks faced by Firefighters on a daily basis.

It is also critical to note that the Town's reliance on the CWA settlement to demonstrate why the contribution cost is reasonable must fail. See T-75 and T-76. CWA employees are not subject to the substantial risks faced by Firefighters on a daily basis.

As a result, this proposal should be denied.

B. Section 2 of Article 8. It appears that the Town is seeking to revise this provision as to retirees in order to remove any reference to Blue Cross Blue Shield and replace that language with all references to the State Health Benefits Plan. Additionally, it appears that the Town is seeking to limit Medicare Payments reinstated as to Medicare Part B (now about \$1,2000 per year) to the premium cost as of July 1, 2007.

To the extent that the Town seeks to limit or change benefits as to existing retirees, it is without the legal ability to do this! Therefore, it would seem that the Town seeks to limit this change in benefits as to future retirees.

The Town has failed to supply any evidence as to why this revision should be awarded. It is again critical to note that no other Union within the municipality agreed to the above-requested revision in recently signed MOA's. This is especially pertinent since the Town entered into

successor agreements with the PBA, PSOA and Council 11 in March 2009.

With respect to the Town's proposal to limit Medicare Part B payments, that proposal should also be denied. First, this proposal was not imposed upon the PBA, PSOA and Council 11 in its recent negotiations. More importantly, however, FMBA members are subjected to substantial risks as Firefighters and face heightened health risks prior to and after retirement. This typically leads to greater costs associated with out-of-pocket health insurance costs. Firefighters should not, therefore, be subjected to additional costs associated with Medicare Part B payments. The Town has failed to submit any evidence which specifically demonstrates that the Town's cost for providing this benefit is substantial.

Further, the age 65 Medicare Part B reimbursement is about \$1,000 per year. For retired employees the full reimbursement should continue to be received including any increases from the present payment (or for that matter decreased as is contemplated by the Obama health care proposal). Retirees (limited to future retirees since present retirees cannot be legally affected) are especially in need of actual reimbursement for the payment made by them. Since at age 65 the Town's health benefit premium is reduced or eliminated, there should be no change limiting this already small payment (Medicare Part B). Note also that the present PBA Agreement, recently made, does not seek to limit the Part B reimbursement. As a matter of fact, page 2 of the PBA Agreement as to future retirees, preserves the current health issue coverage, including full payment for Part B.

C. Section 4 of Article VIII. The Town is seeking to revise this provision so that references to the State Health Benefits Plan prescription program are acknowledged in the provision, and apparently so that any modifications to the Plan occur, the Town can implement those revisions. It appears that the Town is also seeking to eliminate any reference to the current prescription drug co-pay of \$1 for generic prescriptions and \$5 for name brand prescriptions, and also to eliminate the Town reimbursement program.

This is another dramatic unsupported proposal by the Town to dramatically change by way of reduction, dental benefits. As noted above, to the extent that this seeks to change benefits for current retirees, it is illegal to change those benefits since they may not be negotiated away in the current proceedings either by voluntary negotiations or award. However, to the extent that this proposal seeks to reduce the co-pay for brand name prescriptions this, it should be noted, should be denied only because this has not been done in the recent Memorandum of Agreement with Kearny's police which, of course, is attached to the Exhibits in the Introductory Remarks and is attached as an Exhibit here. The only changes in health benefits there are very limited and involve paying the difference between the Direct 10 and Direct 15.

Article 14 – Leaves of Absence

Both parties have proposed modifications to Article 14 – Leaves of Absence. The Town has proposed the following modifications to Article 14 – Leaves of Absence:

Section 6 shall be modified so that the first sentence shall state:

“Each member covered by this Agreement shall be entitled to and granted terminal leave upon regular retirement after 25 years or more years of service in the Police and Fire Retirement System (PFRS).”

The FMBA has responded to the Town’s proposal:

The Town has failed to offer any credible evidence as to why this proposal should be awarded. No evidence has been submitted which demonstrates that the provision, in its current form, has led to any problems. Again, the terminal leave policy has not been changed, as is sought in this proposal, in the recently negotiated parity partner PBA Agreement and there is no basis for any change in it now.

Based on the foregoing, the Town’s proposal is unreasonable and should not be awarded.

The FMBA’s proposed modifications to Article 14 include two (2) sections of that Article. The first concerns an expansion of individuals in the bereavement leave policy set forth in Section 3:

Section 3. The FMBA is seeking to include the following individuals within the current bereavement leave policy: children’s grandparents, brother-in-law and sister-in-law. The FOA and PBA receive this benefit.

The second modification to this article deals with the calculations for terminal leave in Section 6. The FMBA submits that:

Section 6. The current terminal leave calculation causes an inequity for day workers. This policy should be revised to reflect the terminal leave language set forth in the FOA's collective bargaining agreement.

The Town seeks the denial of the FMBA's proposal.

Article 15 – Vacations

Both parties have proposed modifications to Article 15 – Vacations. The Town has proposed to modify Article 15 – Vacations to include the agreed upon carryover provisions for vacation and add language to provide that any such vacation carried over shall be used within the first three months of the following calendar year. The FMBA objects to this proposal and instead seeks payment for all carried over vacation time for the ability to carry over all unused vacation days at the end of the calendar year. The FMBA's position on this is set forth in greater detail in its proposed revisions to Article 32, policy determinations, Section B.

During the last three (3) months of any particular year, if it becomes necessary to carry over vacation time into the next succeeding year, the employee shall receive payment at the option of the Town of the said carried over vacation time at straight time rather than vacation days themselves.

This language should be clarified so that if it becomes necessary to carry over vacation time into the next succeeding year, the employee would be entitled to receive, at the option of the Town,

payment for all carried over vacation time at straight time or, in the alternative, the ability to carry over all vacation days themselves. The level of manpower within the Town is substantially lower than it should be, and as such, members of the FMBA are not always provided the ability to utilize their vacation time at the end of the year.

Moreover, many municipalities authorize their employees to carry over unused vacation time, including but not limited to: Hillside, Jersey City IAFF, Gloucester FMBA, Hoboken IAFF, Passaic FMBA, Newark, Bergenfield, West Orange and Rahway. See FMBA New Exhibit No. 166.

Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

The Town objects to this proposal and has instead proposed language to modify Article 15 to require, among other things, that any vacation carried over shall be used within the first three months of the calendar year.

The FMBA proposes to increase its vacation day benefit by one 24-hour shift for all Firefighters assigned to the 24 hour tour. The day workers, who work 10-hour days, are seeking to increase their vacation benefit by 2 10-hour shifts. The day workers who work an 8 hour day are seeking an additional benefit of three 8-hour shifts of vacation. The FMBA has also proposed to revise the language set forth in Section 2, Subsection E to reflect the prior practice, meaning that FMBA members would be allotted 12 vacation hours for every five (5) years of service.

The FMBA offers the following argument in support of its proposals:

As noted above, the FMBA is seeking to increase its vacation day benefit by one 24-hour shifts for all Firefighters assigned to the 24 hour tour. Similarly, the day workers, who work 10-hour days, are seeking to increase their vacation benefit by 2 10-hour shifts. In addition, the day workers who work an 8 hour day are seeking an additional benefit of 3 8-hour shifts of vacation. As set forth below in the current PBA and SOA CBA's, all members that have completed three (3) years of service are entitled to 29 vacation days, or 232 hours of vacation time if broken down into hours. Members of the FMBA who have completed the same three (3) years of service are only entitled to eight 24-hour vacation days, or 192 hours of vacation time. It should also be noted that PBA members receive an additional holiday for their birthday.

Article XIII, Vacations, Section 1 from the PBA and PSOA CBA's, provides as follows, in pertinent part:

All employees covered by this agreement who have completed three (3) or more years of service shall receive twenty-nine (29) working days of vacation with pay annually.....

In addition to the above, the PBA and PSOA receives the following additional benefit pursuant to Article XV, Holidays, Section 3:

Each employee may observe his/her birthday by not working on such day after having seventy-two (72) hours notice and in such case shall be paid for such day at his/her regular rate of pay. In the event an employee's birthday falls on a day upon which the employee is not scheduled to work, he may observe such holiday after notice on the next work day after the date upon which his/her birthday falls. In the event the employee elects to work on his/her birthday, the employee shall be paid for his/her birthday in the same manner as other holiday.

Based on the foregoing, the FMBA should receive the same benefit to help bridge the gap between the police and fire salaries and benefit package.

The Town urges rejection of the FMBA's vacation proposals. The Town submits the following argument:

FMBA seeks 1 additional 24-hour vacation day for tour firefighters and 2 additional 10 hours vacation days for staff employees who work a 4/3 schedule of 10 hours. The basis for this request is an alleged disparity in treatment with police based on work hours per cycle or per year of the two departments.

As discussed later in this brief, comparability between police and fire departments is elusive, particularly when comparing work schedules. For example, a comparison of firefighters and police officers tour schedule reveals that a firefighter is scheduled to work 91 days per year (24/72) whereas a police officer is scheduled to work 243 days per year (4/2). A tour firefighter gets 8 vacation days which reduces his scheduled number of work days from 91 to 83. A tour police officer gets 29 vacation days which reduces his scheduled number of work days from 243 to 214.

A staff or day worker in the fire department works a 4/3 schedule and receives 20 vacation days. Thus, the total scheduled days of work for the day worker is 208 less 20 vacation days which yields 188 scheduled days of work compared to the police officer who is still scheduled for 214 after deducting his/her vacation entitlement.

This analysis clearly undermines any legitimacy to the request for increased vacation. Moreover, and more importantly an increase in vacation would not be in the best interests of the public because it would unnecessarily increase the cost of operating the Department and could also adversely affect manpower requirements.

The Union also seeks to undo the deal it made with the Town in the prior contract concerning progressive increases in vacation based upon length of service. Under the prior work schedule that produced 182 scheduled days of work firefighters would get an extra vacation day for every 5 years of credited service.

Under the current work schedule firefighters are scheduled to work one half the number of days previously scheduled and the agreement to offset this reduction in scheduled work days was to adjust the escalator from 1 day per 5 years to 1 day per 10 years of credited service. The agreement made at the time of the work schedule change should remain in place and this demand should be dismissed. The granting of this demand would not be in the best interest of the public because it further erodes the service to be provided by firefighters that is being paid for by the taxpayer without justification of such erosion.

Article 16 – Sick Leave

The Town has proposed to modify Article 16 – Sick Leave by modifying

Section D3:

“After four sick leave occurrences in a rolling 12-month period for non-24 hour employees and three sick leave occurrences for 24-hour employees, where an occurrence is defined as continuous leave of absence resulting from an incident or occasion which resulted in illness, injury, accident and/or exposure to contagious disease.”

The FMBA has responded to the Town’s proposal:

Currently, non-24 hour employees may not be required to provide a note until the member has five (5) sick leave occurrences within a 12-month period. Currently, 24-hour employees may be required to provide a note if the member has four (4) sick leave occurrences within a 12-month period. The Town has failed to offer any credible evidence as to why this provision should be implemented. No evidence of sick leave abuse has been submitted in this Interest Arbitration, and as such, the proposal is unreasonable and should not be awarded. Again this is a situation where there has been no change in this regard in the recently negotiated PBA contract nor is any change justified.

Grievances

The Town proposes that all pending grievances shall be withdrawn with prejudice. The FMBA urges rejection of this proposal and makes the following argument:

The Town has failed to submit any evidence as to why this proposal should be awarded. More importantly, the FMBA has a right to pursue remedies through the grievance procedure for any of the defined grievable issues that arise in the Town which detrimentally impact members. The Town cannot now attempt to eliminate the FMBA’s right to pursue any outstanding grievances through this Interest Arbitration.

Based on the foregoing, the Town’s proposal is unreasonable and should not be awarded.

Duration

The parties disagree on the length of the contract. The Town proposes a four-year term from July 1, 2007 to June 30, 2011. The FMBA proposes a five-year contract, effective from July 1, 2007 through June 30, 2012. The Town contends that the length of the FMBA's proposed contract is unduly long and unwarranted. The FMBA's argument in support of its proposal states that:

Anything shorter than a five-year (or six-year) CBA will undoubtedly force the FMBA and the Town to become involved in another protracted contract negotiations, especially given the Town's obvious resistance to negotiating with the FMBA.

...

As noted above, and as set forth in numerous FMBA Exhibits, the FMBA is seeking a five (5) year and/or six (6) year CBA due to the protracted length of this arbitration. As noted above, due to the fact that an award will not likely be forthcoming until late 2009 or 2010, only makes sense to award a five (5) year and/or six (6) year CBA. The Town's proposal is entirely unreasonable and should not be awarded especially because the CBA expired more than two (2) years ago (June 30, 2007). If a four (4) year CBA is awarded, it is likely that the Award will be issued within a year of the successor CBA expiring. The existing police contract covers six years not covered by the expired FMBA contract (or Award), i.e. 2007, 2008, 2009, 2010, 2011, and 2012.

As such, the only reasonable solution is to award a six (6) year CBA as requested by the FMBA in its Final Position.

It is also critical to note that the Town and its police employees recently entered into a successor CBA, the term of which are effective through December 31, 2012. Those contracts will expire more than one (1) year after when the Town's proposed CBA will expire for the FMBA. See Town Exhibit Nos. 167 B and C; see attached **Schedule D**.

Based on the foregoing, the Town's proposal is unreasonable and should be denied.

Senior Duty Differential

The FMBA has proposed to implement a Senior Duty Differential for those members who have completed a specific number of years as a Firefighter. The FMBA requests the following additional payment, in base pay, upon completion of the following years of service with the Town: 1.5% - 15 years; 3% - 20 years.

In support of its proposal, the FMBA offers the following argument:

The above-requested payment will only be provided to a limited number of members of the FMBA, and therefore, would be similar to the percentage payment for those PBA employees who are eligible to receive the 5% night hazard differential pursuant to Article XXIII, Night Hazard Differential, Section 1. Alternatively, the FMBA seeks the same payment as a night differential, particularly since it is common to receive both payments in Fire Departments throughout the State.

The Town urges rejection of the FMBA's proposal. In doing so, it refers to negotiations history which it asserts supports its position to deny this demand:

Apparently, the Union now feels it made a "bad deal" on this part of its compensation plan because it seeks an additional 1.5% at 15 years and an additional 3% at 20 years for all firefighters to address the perceived shortfall in longevity. Were this request to be favorably entertained by the arbitrator it would result in a firefighter receiving the equivalent of 12.25% (9.25% in the rate by the 9th year and 3% more at the 20th year) after 20 years of service versus a police officer receiving 12% at the 24th year of service. These observations are made to illustrate the distorted perception that permeates the proposals submitted by the FMBA, and this is but one of many "Final Proposals" submitted by the Union to this arbitrator for ruling.

Night Differential

The FMBA proposes to implement a night differential payment and to incorporate the payment into base pay. The FMBA asserts that a number of other fire departments already receive this payment and further that the PBA also is provided a night differential payment. The FMBA, therefore, seeks a payment in the amount of .6% which it asserts is the same payment PBA members receive under the muster time pay allowance. The FMBA argues as follows:

As noted above, certain Kearny PBA members receive a night differential in the amount of 5% pursuant to Article XXIII, Night Hazard Differential, Section 1. All Kearny PBA members receive a .6% payment added to base pay for muster pay. The FMBA is seeking to obtain the .6% received by PBA members. The .6% payment would be for all members of the FMBA on the 24-hour shift. As demonstrated in Exhibits submitted in this Interest Arbitration, the Cities of Newark and Trenton provide their Firefighters with a night differential. Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

The Town objects to this proposal. It notes that the 2001-2007 contract provided for night differential of \$250.00 per year which FMBA Local 18 agreed to remove from the contract effective February 1, 2004. The Town alleges that the Union now seeks to reestablish the Night Differential at a rate of .6% per annum despite the fact that this provision had previously been removed from the Agreement.

Clothing Allowance

The FMBA proposes to eliminate the clothing exchange program currently in place and replace it with an annual payment in the amount of \$1,000. In support of this proposal it argues:

The FOA, PBA and SOA continue to receive clothing allowance stipends. The FMBA no longer receives this stipend. By way of background, the stipend was eliminated and replaced with a direct exchange program, whereby clothing orders/repairs are ordered through the mail. To date, this program has been ineffective. The FMBA is, therefore, seeking to eliminate this program, which is currently paid for through a line item in the Fire Department Budget. This program should be eliminated effective June 30, 2009. Thereafter, effective July 1, 2009, the FMBA should be provided an annual \$1,000 clothing allowance, as is currently provided to the PBA.

The Town objects to this proposal and accuses the FMBA of seeking to recoup and in fact enhance items they negotiated out of their last contract or modified in that contract to secure the work schedule and salary guide they desired. Under the 2001-2007 contract the firefighters had a \$525.00 per annum clothing allowance that was "removed" from the agreement effective February 1, 2004. In its "revised final position" submitted to the arbitrator FMBA Local 18 seeks elimination of the direct clothing exchange program and restoration of a clothing allowance at the enhanced value of \$1,000.00 per annum.

Widow's Benefits

The FMBA claims that the PBA receives full surviving spouse benefits, whether the PBA member dies while actively employed as a police officer or during retirement. The FMBA seeks to incorporate this benefit into its collective bargaining agreement for its members. On behalf of this proposal it makes the following argument:

Currently, all FMBA surviving spouses are required to pay the full cost of health benefits, which include health insurance premiums, Medicare and prescription drug costs. The FMBA is seeking full surviving spouse benefits, whether the FMBA member dies while actively employed as a Firefighter or during retirement. The PBA currently receives the benefit sought by the FMBA in this Interest Arbitration.

Notably, other municipalities provide their fire employees with surviving spouse benefits. The following are a sample of municipalities that provide their employees with surviving spouse benefits: Union, Hamilton Township District 3, Franklin, Bayonne, Linden, Paterson, Hoboken, Passaic, Harrison, Belleville and Woodbury. See FMBA New Exhibit No. 165 and Schedule E.

The Town does not specifically address this proposal.

Article III – Section 4 **Conducting FMBA Business on Town Time**

The FMBA proposes to eliminate the current restriction that only allows three (3) employees to be granted time off from their work assignments, with pay, for four (4) collective bargaining sessions. It seeks to allow designated employees time off with pay to attend all collective bargaining sessions. It submits the following argument:

The FMBA is seeking to revise this provision so that the three (3) designated employees allowed time off, with pay, to attend collective bargaining sessions, can do so without limitation. As noted above, any additional time off is not with pay meaning that designated union officials need to use their accrued time or covers to attend collective bargaining sessions. This restriction should be eliminated because these designated employees cannot adequately represent their members if they are not afforded the opportunity to attend all collective negotiations sessions without restrictions.

The Town seeks denial of this proposal asserting that the current amount of leave is appropriate.

Article X – Holidays

The FMBA has proposed to roll 20 additional hours of holiday pay into base pay. It makes the following argument in support of its proposal

Pursuant to Section 5 of the FMBA CBA, 168 hours of holiday pay was rolled into base pay effective July 1, 2003. Prior to this CBA, FMBA members received premium holiday pay on certain holidays, meaning FMBA members received additional hours of holiday pay in excess of 168 hours. This concept is reflected in the FOA CBA where 188 hours of holiday pay was rolled into base pay, pursuant to Article VII, Wages and Miscellaneous Benefits, Section 5, Holiday Pay, Subsection (e).

Accordingly, the FMBA should, at the very least, receive an increase in the holiday pay so that 188 hours of holiday pay are rolled into base pay.

The Town opposes the FMBA's proposal. It makes the following argument in support of its denial:

As part of its last settlement FMBA Local 18 sought and achieved a roll in of 168 hours of holiday pay to base salary effective 7/1/03. Fire Superior Officers went to interest arbitration and holiday pay was eventually rolled in to their base salary at the rate of 188 hours but not until 2 years later on 7/1/2005. To now award firefighters an additional 20 hours of holiday pay simply because Fire Officers

received 188 hours is a classic case of whipsawing the employer for no valid reason other than the perception of the FMBA that now does not like the deal it negotiated then. Firefighters received and continue to receive the value of 14 holidays x 12 hours or 168 hours that are enhanced with each wage increase both as to current rate and pension value. Awarding this request will simply add an unjustified cost to the compensation package of firefighters that taxpayers must bear.

Out of Title Pay

The FMBA has proposed to provide the Inspector of Combustibles with out-of-title pay when required to perform duties of the Chief Inspector of Combustibles. In support of this proposal, the FMBA submits the following argument:

Article VII, Wages, sets forth all titles within the bargaining unit. In addition to the position of Firefighter, the FMBA also represents the following additional titles: 1. Chief Inspector of Combustibles; 2. Mechanic & Lineman; and 3. Inspector of Combustibles.

The Chief Inspector of Combustibles holds a higher rank than the Inspector of Combustibles. This is demonstrated not only by the job duties, but also by the salaries set forth in the above article. On occasions when the Chief Inspector of Combustibles is on vacation or is using other accrued time off, the Inspector of Combustibles is required to perform duties of the Chief Inspector of Combustibles. In those situations, the Inspector of Combustibles should receive out-of -title pay.

Based on the foregoing, the FMBA's proposal relating to out-of-title pay is reasonable and should be awarded.

The Town seeks the denial of this proposal.

Differentials for Employees Assigned to the Day Shift

The FMBA has proposed a 10% differential between the rank of a top pay rank-and-file Firefighter and the Fire Prevention Specialist (Inspector of Combustibles). The FMBA has also proposed to set forth the current differentials for the Mechanic and the Chief Inspector of Combustibles in the Agreement. It argues as follows:

According to the expired CBA, the Fire Prevention Specialist, who is referred to as the Inspector of Combustibles, receives a salary of \$97,568. See FMBA Exhibit No. 3. Notwithstanding this, the parties, by agreement, revised the above salary. As a result, the salary was reduced to \$89,222. The salary is confirmed in an resolution. See Exhibit B. The FMBA, in this negotiations, is seeking to revise the above salary so that there is a differential of 10% between the salary of a top pay rank-and-file Firefighter and the Fire Prevention Specialist (Inspector of Combustibles). There is currently a 7% differential between the above ranks even though the differential itself is not specifically set forth in the CBA. The increase in the differential is necessary because the Inspector of Combustibles is currently required to hold a Fire Official certification and an Arson certification. The above additional certifications are not required of a Fire Prevention Specialist, and as such, the Town should be required to increase the differential accordingly. In addition to the above, the FMBA is seeking to set forth the current differentials for the Mechanic and the Chief Inspector of Combustibles in the CBA. That aspect of the provision is non-economic in nature.

The Town objects to the economic portions of this proposal but does not object to the inclusion of the titles and compensation into the Agreement.

Special Payments

The FMBA has proposed a 2% payment for the performance of First Responder Duties. The FMBA has also proposed a \$1,500 payment for the performance of Hazmat and Technical Rescue duties. The FMBA offers the following argument in support of its proposals:

First Responder Duties. The FMBA asserts that it is entitled to special consideration in the area of wages, First Responder work-related payment, and other important payments because of the difference in pay between the FMBA and other large, urban Fire Departments throughout New Jersey for the performance of these First Responder related duties. As set forth in numerous FMBA's Exhibits, and as is set forth throughout this Post-Hearing Brief, the Kearny Fire Department responds to and handles an exceptionally large amount of emergency medical service related calls. The amount of work performed during these medical calls comprises a significant percentage of fire runs. The FMBA may be called to perform First Responder duties while responding to a car accident or other serious calls which require the FMBA to stabilize those who have been injured while the FMBA waits for the ambulance to arrive on the scene.

As it is clearly set forth in the chart provided below, a large number of municipalities provide for a payment for responding to medical calls. Many of these municipalities, as set forth in the charts submitted by the FMBA, perform minimal EMS/First Responder duties and receive substantial stipends nonetheless. This alone demonstrates that the FMBA should be provided the requested stipend. The following municipalities receive compensation for performing EMS related duties, while arguably responding to fewer calls than the Trenton Fire Department:

Municipality	EMT Pay/Stipend
West Orange	2% stipend added to base pay
Teaneck	2% stipend added to base pay
Clifton	\$2,700 added to base pay

Linden	8% stipend added to base pay
Hillside	6% stipend added to base pay
Ocean City	\$3,486
New Brunswick	1.25%
Maplewood	\$1,444 added to base pay
Belleville	\$2,650 for both the maintenance of EMT certification and for Firefighters assigned to 1 st line ambulance duty
Ventor City	\$1,500 added to base pay
Roselle	5% + \$1,000 (Ambulance Providers at 3%)
South Orange	\$1,250 added to base pay
Westfield	\$1,500 (Firefighters) \$1,633 (Fire Officers)
Springfield	\$750 in base for EMT; \$750 in base salary for first responder duties
Wildwood	\$1,000 added to base pay
North Wildwood	\$1,000 added to base pay
Ridgewood	\$3,471 added to base pay
Bergenfield	\$1,526.62 added to base pay
Hackensack	\$1,250 added to base pay

See FMBA Exhibit 58.

It should be noted that a large number, if not all of these municipalities, incorporate this payment into base pay for pension purposes. See FMBA Exhibit No. 59.

As set forth in FMBA Exhibit 63, the Teaneck FMBA Local No. 42 was awarded a 2% EMT stipend to be included in base pay in Interest Arbitrator James P. Begin's decision, dated March 15, 1999. In its discussion of the stipend, Arbitrator Begin noted that there were compelling bases for awarding the stipends, including the increase in the medical response workload and the fact that EMT/EMS certification has been recognized by many other communities through additional compensation. Arbitrator Begin also noted that uncontroverted evidence had been placed in the record that paying stipends for EMT/EMS certifications are paid in many other municipalities including Hackensack and Ridgewood in Bergen County. He noted that: **"These stipends usually range from \$1,252 to \$3,471 so the 2% awarded here with the current cost around \$1,000.00 at the maximum base salary is at the bottom of payment."** (Emphasis added). Accordingly, Arbitrator Begin awarded a 2% stipend and base pay for the EMT/EMS certification.

In this instance, however, the FMBA submits that its specific request for a 2% stipend for performing EMS special work/First Responder service is necessary because of the substantial workload performed by the members of the FMBA. The FMBA, as demonstrated in its submissions, received a substantially lower annual salary when compared to other Firefighters in large urban municipalities in the State. This clearly establishes the need to implement a First Responder payment, as set forth above.

Accordingly, these members should be compensated in the manner set forth above for providing these critical and necessary duties for the Town.

Hazmat Pay. As noted above, the FMBA is seeking a \$1,500 Hazmat Payment. All Firefighters are trained and qualified to respond to Hazmat situations. This training is substantial and complicated due to the various terrorism issues that presently exist. Those who are Hazmat trained, for instance, must understand how to use intricate meters, detectors and other advanced technology in order to be qualified to respond to a Hazmat incident.

As is the case in a recent Elizabeth Award where there is Hazardous Material pay, the sum of \$1,500 should be paid in base pay for this service. The following chart also illustrates other large, urban municipalities that provide their employees with substantial payments for the performance of HAZMAT duties and

for the corresponding training that the Firefighter must receive in order to qualify to perform those duties.

**HAZMAT PAY
MUNICIPALITY AMOUNT**

Newark	\$4,000
Paterson	\$2,000 (2006 - one time payment)
Nutley	\$2,200
Elizabeth	\$1,200 (2007) \$1,500 (2008)
Bayonne	\$1,000
Trenton	1% stipend

The municipality even has a DECON (decontamination) trailer. Very few municipalities in the State of New Jersey house a DECON trailer. The trailers are also complex and require the Firefighters to be fully trained in the use of the trailer and the items housed inside that trailer. Notably, municipalities such as Newark provide their employees who perform DECON related duties with an annual payment in the amount of \$1,200. See FMBA Exhibit No. 28.

Based on the foregoing, the FMBA's request to implement a HAZMAT stipend is reasonable and should be awarded.

Technical Rescue Pay. As noted above, the FMBA is seeking to implement a \$1,500 payment in base pay for the performance of technical rescue duties. Not all employees are trained to perform technical rescue duties. All employees who are trained to perform these duties should be provided a payment for the performance of these duties. These employees are trained in structural collapse, trench, confined space and high angle rescue. The duties performed by these employees are exceptionally dangerous, and as such, those Firefighters should receive the above-requested payment for the duties associated with technical rescue.

Other large municipalities provide their employees with payment for the performance of specialized duties. The following chart provides a sample of specialized payments received which are similar to the

payment being sought in connection with the performance of technical rescue duties.

MUNICIPALITY	OTHER PAY	AMOUNT
Newark - Scuba Tech		\$2,500
Paterson - Emergency Medical Dispatchers Urban Search and Rescue Technician Arson Investigator		\$2,000 (2006 one time payment)
Newark - Decon Unit		\$1,200
Elizabeth - Tech Rescue		\$1,200 (1/1/2007) \$1,500 (1/1/2008)
Bayonne - Confined Space		\$1,000
Trenton - Scuba Tech		1.25%

Based on the foregoing, the FMBA's proposal pertaining to Technical Rescue duties is reasonable and should be awarded.

Note, however, the recent Paterson Award and the comments in the Introductory Remarks. (See IR 8, and new Exhibit 164). Paterson pays \$4,000 per year for First Responder pay (\$2,000) and special other pay (additional \$2,000).

The Town objects to all of these proposals. While it does not address each of these proposals individually, it submits that the sheer number of proposals in this final position are counter-productive to the process that is designated as a last resort to resolve a contract impasse, and that the magnitude of the cost of this "final" position of the Union makes the Union position "per se" unreasonable. The Town further emphasizes that when all of the FMBA's proposals are totaled, the maximum salary would increase from \$83,385.00 as of

June 30, 2007 to \$93,176.00 as of July 1, 2007 or \$9,791.00 more for the first contract year.

Military Leave Time

The FMBA proposes to clarify the Town's policies concerning Military Leave Time. It seeks to include the state, federal, and local policies and practices into the terms of the Agreement. The Town has not objected to this proposal.

Article VIII, Insurance Programs, Section 3

The FMBA is seeking to reinsert the retiree dental benefit language in the CBA that it submits was improperly deleted from the last agreement. The FMBA acknowledges that although this benefit was modified during the negotiations of the last CBA, the FMBA contends that it did not agree to remove language pertaining to dental benefits for retirees. Dental benefits are contained in Article VIII, Section 3. It provides as follows:

Effective January 1, 2004, all active members shall be included in the town-wide Dental Plan #3090-001, \$2,000 annual benefit.

The FMBA's reasoning in support of this proposal is as follows:

As demonstrated above, the parties modified the dental benefit during the negotiations of the last CBA. That modification solely consisting of a change in the total annual benefit received.

The language set forth in the CBA which was effective July 1, 1996 through June 30, 2001, provided for the following dental benefit pursuant to Article VIII, Insurance Programs, Section 3:

The employer shall continue the present dental program with the New Jersey Dental Plan, which plan shall be a 80/20 plan with a \$25.00 deductible per person and/or a maximum deductible of \$75.00 per family per annum. Effective January 1, 1989, employees who retire may remain in the group dental program at the sole expense of the employee. [Emphasis Added].

The FMBA never agreed to delete the above-referenced language regarding retiree dental care. It was inadvertently removed from the CBA. The language should be reinserted in the CBA.

Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

The Town offers no specific objection to this proposal.

Article X – Holidays

The FMBA proposes to incorporate language into the CBA which it asserts would only set forth the current practice regarding holidays for day workers. The FMBA asserts:

Pursuant to Section 5, holiday pay was rolled into base pay effective July 1, 2003. Day workers, specifically, those employees in Mechanic and Inspector titles, were supposed to continue receiving holidays off, as is the practice with all other day workers in the Town. This is the current practice. Language that sets forth that practice should be included in the CBA for all current and future day workers.

Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

The Town offers no specific objection to this proposal.

Article XI – Overtime

The FMBA proposes to require the Town to generate an overtime list in each Fire House. The basis for this proposal is as follows:

The FMBA is requesting that the Town generate an overtime list on the computer system in each firehouse so that all employees will be able to see where their name falls on the overtime list. The Town should also generate a vacation list to be posted at each station. This proposal will not cost the Town any money.

Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

The Town offers no specific objection to this proposal.

Article XII – Hours

The FMBA has proposed to modify this Article to allow for unlimited covers. Article XII, Hours, Section 6, provides as follows:

All employees, except those employees addressed in Section 7 below, covered by this Agreement shall be entitled to get another firefighter to "cover" (work) their shift. Members will be permitted to exchange their scheduled work shift with another employee a maximum of 15 times per year. "Covers" will not be allowed for more than 48 hours in one month. Requests for additional covers must be in writing to the Chief of the Department who will make a determination on the request.

In support of its proposal, the FMBA submits the following argument:

As noted above, this section currently allows employees the ability to exchange their scheduled work shift with another employee a maximum of 15 times per year, which is further limited so that employees can only utilize 48 hours worth of covers during a given month. This practice is commonly referred to as "covers". The FMBA is seeking to change the policy so that they can take unlimited covers. This does not have any monetary impact on the Town.

Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

The Town responds that the FMBA is seeking to recoup certain give-backs that were made as part of a previous overall settlement, including an Agreement to limit covers to 15 times per year and not more than 48 hours in any one month. The Town submits that this approach should be rejected by the arbitrator.

The FMBA also proposes to eliminate the limitation on probationary Firefighters who are currently not eligible for "covers" until forty-five (45) days after completion of their fire academy training from the Agreement. According to the FMBA:

This limitation should be removed from the CBA. This proposal does not have any monetary impact on the Town. Furthermore, the Town has failed to demonstrate that any other municipalities place such a restriction on probationary Firefighters.

The FMBA further proposes to include a clarification in the Agreement to accurately reflect the current work schedules of the Inspector and Chief Inspector.

Article XII, Hours, Section 7, Section 1, addresses the hours of work for rank-and-file Firefighters. Article XII, Hours, Section 7, Section 3, addresses the work hours of the Mechanics. The article does not, however, set forth the hours of work for the Inspector and the Chief Inspector. The current work schedule of both positions should be set forth within the CBA.

This proposal does not have any monetary impact on the Town.

Article XV – Vacation

The FMBA is seeking language that would allow firefighter to split their vacation days. It argues:

The FMBA is currently required to use their full vacation day allotment. FMBA members are not allowed to split their vacation day into increments. This means that day workers are required to take 10-hour vacation increments at a time and 24/72 workers are required to use 24-hour increments at a time. The FMBA is seeking to revise the above practice so that day workers can take vacation time in 5-hour increments and 24/72-hour workers can take vacation time in increments of 10, 12 or 14, not to exceed 24 hours a tour. This proposal does not have any financial impact in the Town.

Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

The Town seeks the denial of this proposal.

Article XXI – Grievance Procedure

The FMBA is seeking to implement (i) a new provision which allows the FMBA to move to the next step of the grievance procedure when Town Officials fail to respond to the grievance; (ii) revise the definition of grievance to include

safety related concerns; (iii) to increase the amount of time to initiate a grievance from 10 to 30 days after the incident, as well as 30 days to initiate a grievance after a new hire is assigned to a firehouse; and (iv) the Town bears the cost of arbitration if Town Officials fail to respond to the grievance in writing. The FMBA is also seeking to revise this provision so that new hires have additional time to file a grievance. The FMBA submits the following argument in support of its proposal:

New Provision Regarding Movement of Grievance. Article XXI, Grievance Procedure, Section 3, Subsection B and C, provides as follows:

If the grievance is not settled informally, then the FMBA shall submit such grievance in writing, no later than ten (10) days after the incident complained of, except in those cases where the aggrieved is physically incapacitated in which event, he or the FMBA shall initiate this complaint within ten (10) days after regaining his capacity to act, to the Chief of the Fire Department and the answer to such grievance shall be made in writing with a copy to the Town attorney within five (5) days of its submission, excluding Saturdays, Sundays and holidays.

If the grievance is not resolved in accordance with the procedure set forth in paragraph 2 herein, or if no answer has been received from the Chief within the time set forth therein, the FMBA shall submit the grievance to the Fire Committee or the entire Mayor and Council for the purpose of adjusting or resolving such grievances. The Fire Committee, Mayor and Council as the case may be, shall hold a hearing within fourteen (14) days, at which time all parties in interest shall have the right to be heard and shall report its findings in writing to the FMBA and employee concerned within ten (10) days of said hearing in writing. Nothing herein contained shall prohibit the informal settlement of a grievance at any stage.

The above subsections address the initial phase of the grievance procedure prior to the formal arbitration process. The above subsections allow the FMBA to automatically proceed to the next step if the Chief does not respond within a certain number of days. This notion is not set forth in the Fire Commission/ Mayor and Council step. Therefore, a new provision should be incorporated into the CBA which would allow the FMBA to immediately proceed to the next step set forth in the grievance procedure when any of the named Town Officials fail to comply with the time requirements set forth in Section C of the Grievance Procedure.

This will eliminate any of confusion as it relates to the manner in which grievances proceed through the steps and will help bring about better labor relations.

Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

Section 1. Article XXI, Grievance Procedure, Section 1, provides as follows:

A grievance is defined as any disagreement or dispute relating to the terms and provisions of this contract, between the firemen and the employer, or between the FMBA and the employer, whereas to the said terms and provisions of this contract there has been an inequitable; improper or unjust application; interpretation or violation of the Agreement, or a policy or administration decision interpreting this Agreement, which affects them.

The definition for grievance should be revised to include safety related concerns. Safety is, of course, a very important concern of the FMBA, especially given the nature of the risks Kearny Firefighters face on a daily basis.

Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

Section 3, Subsection b. Article XXI, Grievance Procedure, Section 3, Subsection, provides as follows:

If the grievance is not settled informally, then the FMBA shall submit such grievance in writing, no later than ten (10) days after the incident complained of, except in those cases where the aggrieved is physically incapacitated in which event, he or the FMBA shall initiate this complaint within ten (10) days after regaining his capacity to act, to the Chief of the fire Department and the answer to such grievance shall be made in writing with a copy to the Town attorney within five (5) days of its submission, excluding Saturdays, Sundays and holidays.

The ten (10) day restriction to file a grievance should be revised. Allowing additional time will provide members of the FMBA and the union with adequate time to research the merits of the grievance and assess whether it is appropriate to file the grievance. This clearly is in the best interest of both parties. Additionally, it gives the FMBA members additional time to approach union officials to discuss an incident that occurred. Ten (10) days is not a sufficient amount of time for members to discuss the substance of the issue and for the FMBA union officials to research the issue. Notably, if the FMBA is provided additional time to research the substance of an issue it gives the FMBA more time to discuss the issue with management, and hopefully, provides more opportunities to amicably resolve issues without resorting to the need to file a formal grievance.

In addition to the above, the FMBA is also seeking to revise the above provision so that new hirees have additional time to file a grievance. New hirees are not assigned to a fire house until after they complete the academy. Since there is little to no interaction between new hirees and the union, it is often too late to pursue a grievance in a timely manner.

Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

Section 3, Subsection c. Article XXI, Grievance Procedure, Section 3, Subsection C provides as follows:

If the grievance is not resolved in accordance with the procedure set forth in paragraph 2 herein, or if no answer has been received from the Chief within the time set forth therein, the FMBA shall submit the grievance to the Fire Committee or the entire Mayor and Council for the purpose of adjusting or resolving such grievances. The Fire Committee, Mayor and Council as the case may be, shall hold a hearing within fourteen (14) days, at which time all parties in interest shall have the right to be heard and shall report its findings in writing to the FMBA and employee concerned within ten (10) days of said hearing in writing. Nothing herein contained shall prohibit the informal settlement of a grievance at any stage.

Language should be included in this subsection that would require the Mayor and Council to respond in writing to all grievances that are submitted to their attention. If the Mayor and Council fail to respond to the grievance in writing, the Town should be required to bear the cost of any and all arbitration expenses. The Town, on a regular basis, fails to respond to grievances. This has led to poor labor relations between the parties. Moreover, the FMBA has been required to spend a substantial amount of money in order to proceed to arbitration on matters that should have, at the very least, been discussed with the Town so the parties could attempt to reach an amicable resolution in matters.

The FMBA currently has an arbitration pending before PERC in connection with the Town's failure to allow FMBA President Jim Carey time off to attend a Town meeting, the subject of which addressed the Fire Department Table of Organization. The substance and background of the grievance is set forth in FMBA Exhibit No. 81, the facts of which are incorporated herein. See FMBA Exhibit No. 81.

James W. Mastriani was appointed arbitrator in this matter. The parties agreed to address this matter in this Interest Arbitration. This exhibit is also submitted to demonstrate that the Town Council and Mayor consistently fail to respond to grievances.

Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

The Town seeks the denial of this proposal.

New Provision

The FMBA is seeking to incorporate a new provision into the Agreement which would allow Firefighters to work 48 consecutive hours.

Currently, FMBA members are only allowed to work 38 consecutive hours. The FMBA is seeking to change that policy to 48 consecutive hours. The above policy has been in place for a substantial amount of time. No negative repercussions have occurred as a result of this policy and no evidence exists which would demonstrate that the additional work time sought would have any negative repercussions on Kearny Firefighters or the municipality itself.

Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

The Town seeks the denial of this proposal.

DISCUSSION

The FMBA and the Town have offered testimony, and substantial documentary evidence and argument support of their final offers. The issues in dispute are numerous and very broad in scope. All of the evidence and argument have been considered. I am required to make a reasonable determination of the above issues, giving due weight to those factors set forth 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.
- (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).

The disputed issues will be reviewed individually but consideration must also be must be given to the totality of the changes to be made to the existing labor agreement. This method of analysis is consistent with the statutory requirement that the total net annual economic changes be determined for each year the agreement. Consideration to the totality of the changes is also consistent with N.J.S.A. 34:13A-16(g)(8) that allows the arbitrator to consider factors that are ordinarily and traditionally considered in the determination of wages and benefits. That is, the manner in which an individual issue is decided can reasonably impact upon the resolution of other issues requiring an analysis that recognizes the totality of all significant economic issues. This is especially true in this case where there are many issues of economic consequence including Health Insurance, Salary, Parity Payments, Leaves of Absence, Vacation, Sick Leave, Senior Duty Differential, Night Differential, Clothing Allowance, Widow's Benefits, Union Leave, Holidays, differentials for employees assigned to the day shift and special payments (First Responder Duties, Hazmat and Technical Rescue) are in dispute with substantial potential costs and impacts on the Town and the firefighters. Thus, any decision to award, deny or modify any individual issue in dispute will include consideration of the reasonableness of that decision in the context of the totality of the terms that are awarded. I will next review and decide the issues that are in dispute.

DURATION

The FMBA proposes a five year agreement effective from July 1, 2007 through June 30, 2012. The Town proposes a four year agreement effective July 1, 2007 through June 30, 2011. The FMBA asserts that a five year agreement is appropriate because a five year agreement would probably be implemented sometime in 2010 and the additional year would promote continuity and stability in labor relations. According to the FMBA, a shorter period would result in additional protracted negotiations virtually immediately following the implementation of this Award. There is merit to the FMBA's position that a contract of longer duration be awarded. No persuasive arguments have been offered to the contrary. The issues in dispute are more susceptible to resolution on a reasonable basis over a more extended period of time. Moreover, the FMBA's proposed contract expiration is consistent with the termination dates of the agreements between the Town and its Department Heads union, Kearny PBA Local 21 and the Kearny Superior Officers Association. I award a contract duration of July 1, 2007 through June 30, 2012.

SALARY AND BENEFIT ISSUES

It is obvious that the individual issues that concern salary and the other compensation issues of economic impact such as parity payments, leaves of absence, vacation, sick leave, senior duty differential, night differential, clothing allowance, widow's benefits, union leave, holidays, differentials for employees

assigned to the day shift and special payments (first responder duties, hazmat and technical rescue) cannot be properly analyzed and decided in completely separate fashion. There are substantial costs to the Township and impact upon employees associated with each issue. Moreover, they are interrelated in the context of rendering a reasonable overall determination on all of the issues, especially given the fact that a calculation of total annual economic change is required by statute.

Evidence and argument on the salary issue has been submitted independently of the other economic issues but the Town recognizes that all compensation issues must be considered as a whole while the FMBA takes a narrower view. It seeks a determination on the merits of each issue without focus on the cumulative cost effects of all of the issues. All issues require resolution in an integrated fashion yielding results in all areas in a manner that could differ if each compensation issue were viewed in isolation.

For the foregoing reasons, a determination on the most substantial cost item, the salary issue, must first be decided. Any analysis of the salary issue must start with the internal relationships between the FMBA and the other employee organizations who have negotiated with the Town. A proper analysis of this issue, and the application of the statutory criteria to this issue, must, as a starting point, address the FMBA's arguments as to whether there is a pattern of settlement that applies to this bargaining unit and, if so, whether such pattern

indicates that adherence to its terms represents a reasonable determination of the issue. This is so because evidence of pattern of settlement can, pursuant to established case law on this issue, implicate several of the statutory criteria, including the interests and welfare of the public, internal comparisons between an employer's negotiations units, the continuity and stability of employment. Each party addresses this issue but in different fashion.

The Department Head and Assistant Department Heads union negotiates on a calendar year basis and received 3.25% increases effective January 1, 2009 and through January 1, 2012. The Kearny Civil Service Council No. 11 also received 3.25% increases but the increases commenced on January 1, 2008 and for the next three succeeding years terminating in 2011. The Kearny PBA Local 21, representing rank and file police officers, also entered into a four year agreement commencing on January 1, 2009 through 2012. Wage increases for each of those years was 3.5%. Because the FMBA's last agreement expired on June 30, 2007, the FMBA contends that the last years of the PBA's prior agreement are also relevant because those years overlap the beginning of the FMBA agreement that is in dispute in this proceeding. The record reflects that the PBA received increases of 3.95% effective January 1, 2007 and an additional 3.95% on January 1, 2008. The Kearny Police Superior Officers Association also received 3.25% increases effective January 1 of contract years 2009, 2010, 2011 and 2012. Its agreement contains rank differentials and the 3.25% increase maintained those rank differentials. The FMBA emphasizes in this proceeding

that all of the aforementioned increases to the police units are understated because each unit also received an additional .6% in all of the years that the FMBA deems relevant which are 2007, 2008, 2009, 2010, 2011 and 2012, thus turning the 3.95% increases into 4.5% increases and the 3.25% increases into 3.85%.

Clearly, internal comparability or internal patterns of settlement, especially between and among public safety units, are relevant considerations when evaluating the merits of a party's proposals. The application of this subsection of the statutory criteria, N.J.S.A. 34:13A-16(g)(2)(c), is well established. See In the Matter of Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008) wherein the County objected to the arbitrator's application of § 34:13A-16(g)(2)(c) that requires an interest arbitrator to "consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern." In Somerset, internal settlements between the County and other law enforcement units were given significant weight by the arbitrator. In that case, the court rejected the public employer's contention that the arbitrator erred in his application of this factor and the weight to be accorded to that factor. Over the years, numerous interest arbitration awards have been issued where evidence of settlements between a public employer and one or all of its public safety bargaining units have been required to be considered as well

as whether such evidence constitutes a pattern to be applied internally.¹ PERC, in reviewing one such award on appeal, supported this approach as commonly accepted principal in labor relations in the County of Union v. Union County Corrections Officers, PBA Local 999, PERC No. 2003-33. In that case, the County offered a proposal on health benefits that had been accepted by six other bargaining units, including three non-law enforcement units and three law enforcement units. After its proposal had been rejected, a County appeal of that award resulted in a remand wherein PERC stated:

N.J.S.A. 34:13A-16g(2)(c) requires arbitrators to compare the wages, salaries, hours and conditions of employment of the employees in the proceeding with those of employees performing similar services in the same jurisdiction and with “other employees generally” in the same jurisdiction. Thus, this subfactor requires the arbitrator to consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern. See N.J.A.C. 19:16-5.14(c)(5) (identifying a “pattern of salary and benefit changes” as a consideration in comparing employees within the same jurisdiction). Pattern is an important labor relations concept that is relied upon by both labor and management.

In addition, a settlement pattern is encompassed in N.J.S.A. 34:13A-16g(8), as a factor bearing on the continuity and stability of employment and as one of the items traditionally considered in determining wages. In that vein, interest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units. Compare Fox v. Morris Cty., 266 N.J. Super. 501, 519 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994) (in applying N.J.S.A. 34:13A-16g(8), arbitrator should have considered the effect of an

¹ Among these, See In the Matter of Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008). See County of Union I, P.E.R.C. No. 2003-33, 28 N.J.P.E.R. 459 (¶ 33169 2002) and County of Union II, P.E.R.C. No. 2003-87, 29 N.J.P.E.R. 250 (¶75 2003). Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999). County of Essex and Essex County Sheriff and Essex County Sheriff's Officers, PBA Local 183, 31 NJPER 41 (2005). See also, Rutgers, The State University, P.E.R.C. No. 99-11, 24 NJPER 421 (¶ 29195, 1998), City of Clifton, P.E.R.C. 2002-56, 28 NJPER 201 (¶ 33071, 2002).

award on employees in other units); see also Anderson, Krause and Denaco, Public Sector Interest Arbitration and Fact Finding: Standards and Procedures, 48.05[6], contained in Bornstein and Gosline Ed., Labor and Employment Arbitration (Matthew Bender 1999) (citing arbitrators' statement that their award, which took pattern into account, would prevent disruption of future employer-wide negotiations and also commenting that arbitrators are generally hesitant to award increases that would disturb a pre-arbitration settlement pattern absent a showing that a break in the pattern is required to address a specific problem).

This issue was revisited by PERC after Union County filed an appeal after the interest arbitrator issued a second award after the matter was remanded to him. Although PERC expressed no opinion on the merits of the County's proposal and stated that it made no finding on whether a pattern existed or whether the alleged pattern must be followed, PERC once again ordered a remand² explaining:

[T]he arbitrator did not make explicit findings as to whether or not there was a settlement pattern with respect to health benefits and salary – or either of those items. Nor did he make findings as to whether the settlements differed from the offer to this unit or analyze the significance of any differences. These are critical omissions because, as we explained in Union Cty., the existence – or not – of a pattern is an element that should be considered in determining the weight to be given internal settlements and in assessing the effect of an award on the continuity and stability of employment. 28 NJPER at 461. Further, Union Cty. stated that the Reform Act requires the arbitrator to explain the reasons for adhering or not adhering to any proven settlement pattern. Without specific findings as to the existence, nature or scope of an alleged settlement pattern, we cannot evaluate whether the arbitrator fulfilled that function.

I have carefully reviewed the underlying facts of this dispute to evaluate whether there is an objective basis to conclude that a pattern does, or does not,

² This time to a different arbitrator.

exist. Interestingly, neither party's wage proposals are fully consistent with internal settlements that have been negotiated between the Town and its various bargaining units.

The Town's proposals of 3.25% are consistent with the agreements it has negotiated with its other units, at least since 2009. But when comparing the terms of the law enforcement units with its offer to the FMBA, they differ in certain key respects. One is the addition, in the law enforcement units, of 0.6% on top of the base salary agreements for muster pay. This benefit was not a new benefit but its inclusion appears to be "new money" in each year of those agreements as they appear to supplement the stated percentage agreements. The supplementation in those agreements are absent here. The other difference is the Town's proposal to include a 1.5% contribution towards health insurance which the other units were not required to make. In respect to the FMBA's proposals, while arguing in support of pattern (and parity), the FMBA's proposals far exceed the increases that were negotiated with the other units. The FMBA offers rationale for why its proposals should be awarded, but nevertheless, its salary proposals, standing alone or in combination with its remaining compensation proposals, are well in excess of the amounts that would be required to maintain consistency.

What flows from all of the above is that there is a factual framework reflecting the existence of an internal pattern of settlement with respect to base

wage increases. Adherence, at least with respect to base wages and health insurance, represents a reasonable determination of these issues. Neither the Town nor the FMBA is foreclosed from seeking a deviation from that pattern but the record simply does not justify the broad deviations included in their proposals. I apply these principles as follows:

Based upon the entire record of the proceeding, the key components of the award are as follows.

Health Insurance

The Town has sought to negotiate a health insurance plan that is consistent among its various units. The main elements of its proposal require employees to enroll in New Jersey Direct 10 without a premium contribution but to allow an election of coverage under the Direct 15 plan with the employee having the obligation to pay the difference in health insurance premium costs between the Direct 10 and Direct 15 plans. Its proposal to the FMBA is similar except for the requirement that employees contribute 1.5% of salary by way of payroll deduction to the cost of premium for the medical insurance. The FMBA seeks the rejection of all of the elements of the Town's proposals. I award that portion of the Town's proposal that sets the Direct 15 plan as the basic plan with employee option to pay the difference between Direct 10 and Direct 15. This portion of the Town's proposal is consistent with its other agreements and the FMBA has not met its burden to show that it should remain outside of these

terms. I do not award that portion of the Town's proposal concerning the 1.5% contribution. Given the fact that the Town's agreements with both of its law enforcement units expire on December 31, 2012, a required contribution by the FMBA through June 30, 2012 would substantially alter the pattern on this issue that has existed among these units on this issue.

I am aware of the Town's argument that the law enforcement units agreed to the change in health insurance around April 1, 2009 and that the FMBA has not made the contributions that law enforcement employees have made since then, but this fact does not alter the analysis, especially in light of the fact that this award has not, for the reasons stated below, dictated an award for the FMBA on total economic change that is identical to the law enforcement agreements. Accordingly, I award language on the health insurance issue³ that parallels the language in the law enforcement units.

Section 1. The Employer agrees to maintain health insurance coverage through the New Jersey State Health Benefits Plan for all employees and their dependents as defined under the respective policies of insurance as those policies may be amended or modified. Effective upon contract signing and completion of an open enrollment period, the employer shall provide New Jersey Direct 15 and the available HMOs with no premium contribution by employees, but those employees electing coverage under the Direct 10 Plan shall pay the difference in cost between the Direct 10 and Direct 15 to the Town by way of payroll deduction.

The Employer shall have the option to change the specific insurance provider so long as the benefits and conditions are equal to or better than those provided at the time of such change.

³ The intent of this portion of the award is to require consistency between the police department and the fire department on all issues with respect to health insurance. To the extent that there may be a disagreement, either party may seek clarification.

Section 2. The Employer further agrees to provide at no cost to all current eligible retired employees who have been prior to retirement employees covered by this Agreement health insurance coverage that is provided for active employees. Eligible employees who retire after the date of contract ratification will maintain the same health benefits during their retirement that were in effect on the effective date of their retirement. This includes the same level of contribution, if any, in effect at the date of retirement unless there is a change of status in retirement in which event the contribution will be adjusted to reflect that change in status at the time it occurs. It is understood by both parties that the level of benefits provided through the State Health Benefits Plan, as that Plan may be amended or modified, satisfies the requirements of Sections 1 and 2 of this article.

Salary and Other Compensation Issues

Several proposals made by the PBA are on issues that are rooted in the history of prior negotiations. In the prior negotiations, the FMBA achieved a new work schedule based upon 24 hour shifts and a substantially higher rate of maximum salary, the enhancement to salary was based in large part upon the roll-in of certain compensation related benefits. The record shows that some of these benefits were not rolled in on a dollar-to dollar basis presumably because of the roll-up costs to the roll-ins included higher pension payments and impacts on other benefits. Some of the FMBA's proposals are to include certain issues that were removed from the Agreement or reduced due to the prior approach. These include its proposals concerning night differential, clothing allowance, holidays, vacations and unlimited covers (Article 12, Section 6). The Town urges that the agreements that were made at the time of the schedule change or the roll-ins in base pay to remain in place and should not be restored or improved. I

am persuaded by the Town's argument, especially during the period of this contract term, and do not award any of these proposals.

The parties are far apart on the salary issue. Both parties have offered cost estimates of their respective proposals. They are similar in actual dollar amounts, although each reaches different conclusions with respect to the overall amounts of compensation that would be chargeable to all of the changes that could be made to the Agreement. Going into the 2007-2008 Agreement, the cost of base salaries was \$4,518,336. The Town proposes 3.25% increase effective July 1, 2007, but submits that the cost of step increments must be taken into consideration which increases the overall cost to 9.32% and the gross payroll to \$4,939,414. Tracing movement through the guide, the Town estimates that payroll costs would rise by 6.18% in 2008-2009 to a level of \$5,244,866. A similar method in 2009-2010, would increase gross salaries to \$5,536,326 or by 5.56%. In 2010-2011, the gross salaries would increase to \$5,781,644 or by 4.43%. All of the Town's calculations are based upon a 3.25% increase to each step of the salary schedule in each year. Based upon the changes in gross base salaries, the Town estimates that the cost for its proposals amounts to \$1,300,565 or by 27.48%.

In contrast to the costs of its own proposal, the Town estimates that the cost of the FMBA final base salary offer, excluding its proposals regarding such items as senior duty differential, clothing allowance and night shift differential,

result in a total increase over 2006-2007 salaries of \$2,758,706 over the five years or by 58.28%. It calculates the amounts as an additional \$863,450 or 18.2% in 2007-2008, an additional \$527,865 or 9.3% in 2008-2009, an additional \$475,358 or 7.76% in 2009-2010, an additional \$449,986 in 2010-2011 or by 6.68% and an additional \$451,054 in 2011-2012 or 6.14%.

I also award the pattern of 3.25% increases to base pay at each step of the salary schedule and at each rank. The Town's proposal is consistent with its internal pattern. The FMBA disagrees because of other economic terms that exist in the law enforcement agreements from which it claims that the Town's proposal is inferior and must be augmented by many other forms of compensation including a 2% parity payment in each year of the agreement. The FMBA's proposals for 4.5% increases plus 2% parity payments are without merit for the reasons cited above, as well as the fact that the awarding of such increases would so encroach upon the Town's budget responsibilities in all areas of its budget that the result would cause adverse financial impact on the governing body, its residents and taxpayers.

The FMBA's financial expert has submitted an extensive report putting the Town's financial position in its most favorable light. One such argument is the strong tax base of the Town that has yielded a net valuation taxable of \$1,068,980,500 in 2008. He points out that one-third of the total percentage of this comes from commercial and industrial parcels. His report would be more

persuasive in the absence of a declining economy, declining surplus, declining state aid and the budgetary pressures placed upon the Town due to the tax cap levy. I am convinced that an award to base salary⁴ beyond 3.25% per year would be inconsistent with the relevant statutory criteria. These include financial impact, the impact of the costs of the FMBA's proposals on the Town's appropriations and revenue caps, internal comparability and cost of living. For all of the above reasons, I award annual salary increases of 3.25% at each step and rank of the salary schedules. Because this contract is on a fiscal year basis, the effective dates for each increase are as the parties have proposed which is July 1 of each year from 2007 through July 1, 2011.

With respect to the remaining economic issues proposed, I find merit in the FMBA's proposal that a payment be received for firefighters due to the performance of first responder duties. The data submitted by the FMBA concerning the extensive nature of these payments throughout fire departments in New Jersey allows for consideration of this proposal. The FMBA has pointed out, and it has not been effectively rebutted, that the law enforcement units have received additional payments beyond the levels of the across-the-board increases. Because firefighters do not perform the exact same duties, such as to muster, the Town rejects the FMBA's claim for similarity. I sustain the Town's argument with respect to dollar for dollar parity. However, when making proper comparisons between the two groups, the FMBA has shown that there is a basis

⁴ This conclusion does not preclude consideration of other FMBA proposals that have economic impact.

to receive some additional compensation for specialized duties. The financial circumstances of the Town prevents such payments from being anywhere near as substantial as the FMBA has proposed. I do not award the FMBA's proposal to receive payments for the performance of HAZMAT and Technical Rescue duties during this contract term. However, I award a 1% payment for the performance of First Responder Duties and that such payment be considered as part of a firefighter's base pay. The effective date for this payment shall be July 1, 2011.

Additional Items In Dispute

The FMBA has proposed to modify Article 14, Leaves of Absence to include children's grandparents, brother-in-law, sister-in-law in the current bereavement leave policy. It submits that the FOA and the PBA currently receive this benefit. I award this proposal. I decline to award the FMBA's proposal to change Article 14, Section 6 or the Town's proposal to modify Article 14, Section 6.

The FMBA has proposed to have a widow's benefits provision that conforms to the surviving spouse benefits contained in the PBA's agreement. To the extent that this benefit seeks only to conform with benefits between the two departments, I find that this proposal has merit and should be awarded.

The FMBA proposes to include a military leave time provision in its agreement. Such provision should be provided in the agreement to allow for proper notice. Such provision shall conform to the provision in the PBA Agreement and shall include any local policies and practices that are currently applicable in the Town's resolutions and/or standard operating procedures.

The FMBA proposes to reinsert retiree dental benefit language that it asserts was inadvertently omitted from the last negotiated agreement. To the extent that this language was inadvertently omitted from the current agreement, its inclusion in the next agreement is warranted. In the event that the Town disagrees that this language was unintentionally, the FMBA shall submit this issue to grievance arbitration and shall maintain the burden to prove that its exclusion was inadvertent.

The FMBA seeks to include language in Article 10, Holidays, for the sole purpose of setting forth the current practice that exists regarding Holidays for day workers. In the absence of any dispute that such current practice does exist, I award the FMBA's proposal. A similar proposal exists with respect to Article 12, Hours. The FMBA asserts that the Inspector and Chief Inspector work an existing schedule and that the agreement should reflect the current schedule of those positions. To the extent that this proposal seeks to incorporate a practice, I award the proposal.

The FMBA seeks to set forth the current differentials for the Mechanic and the Chief Inspector of Combustibles into the Agreement. I have declined to award increases in the differential. However, there is merit to the inclusion of these titles and their salary levels to be included into the Agreement.

The FMBA has proposed that the Town generate an overtime list in each firehouse. There has been no specific objection to this proposal. However, the proposal does not contain specific details such as the frequency of such postings. I award this proposal subject to the Fire Chief having final review and approval over its details and procedures.

The FMBA has proposed to include language which would allow FMBA members to receive, at the option of the Town, payment for all carried over vacation time at straight time or, in the alternative, the ability to carry over all unused vacation days at the end of the calendar year. This provision recognizes that any such decision to allow payment for carryover is subject to the Town's option. I award this proposal subject to language stating that the option of the Town shall include language stating that the option shall be exercised "at the sole discretion of the Chief."

There are several remaining issues that are economic and non-economic. These include the FMBA's proposals to split vacation days, to modify Article 21, Grievance Procedure, to allow firefighters to work 48 consecutive hours, to allow

probationary firefighters to be eligible for covers without the 45 day limitation, to provide differentials for employees assigned to the day shift and to expand the ability to conduct FMBA business on Town time. The Town has proposed certain modifications to salary progressions, to limit vacation carry over provisions, to modify sick leave in Section B3 concerning occurrences and to have all pending grievances withdrawn. I am unable to conclude on this record that either the Town or the FMBA has met its burden to prove that any of these proposals are justified during this contract term. Accordingly, none of these proposals are awarded.

The annual economic change of this award is 16.25% over five years for base wages with an additional 1% in 2011-2012 due to the First Responder payment. The costs of the award are generally consistent with internal comparability for wage increases that have been granted by the Township during these years in the law enforcement units. The costs are consistent with the cost of living data submitted into the record for contract years 2007 and 2008 but lower than the data in 2009 and 2010 but within a range of reasonableness. The CPI data does not dictate different conclusions that have been reached herein. A similar finding is made with respect to the continuity and stability of employment. The bargaining unit has been stable, has had insignificant turnover and will remain so under the terms of the award. The terms of the award fall above the Town's projected costs under its proposal but far lower than the FMBA's projected costs based upon its proposal.

Accordingly, and based upon all of the above, I respectfully submit the terms of the Award.

AWARD

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

2. **Duration**

The duration of the Agreement shall be July 1, 2007 through June 30, 2012.

3. **Health Insurance**

Article 8, Section 1 shall be modified to provide

The Employer agrees to maintain health insurance coverage through the New Jersey State Health Benefits Plan for all employees and their dependents as defined under the respective policies of insurance as those policies may be amended or modified. Effective upon contract signing and completion of an open enrollment period, the employer shall provide New Jersey Direct 15 and the available HMOs with no premium contribution by employees, but those employees electing coverage under the Direct 10 Plan shall pay the difference in cost between the Direct 10 and Direct 15 to the Town by way of payroll deduction.

The Employer shall have the option to change the specific insurance provider so long as the benefits and conditions are equal to or better than those provided at the time of such change.

Section 2 shall be modified to provide:

The Employer further agrees to provide at no cost to all current eligible retired employees who have been prior to retirement employees covered by this Agreement health insurance coverage that is provided for active employees. Eligible employees who retire after the date of contract ratification will maintain the same health benefits during their retirement that were in effect on the effective date of their retirement. This includes the same level of contribution, if any, in effect at the date of retirement unless there is a change of status in retirement in which event the

contribution will be adjusted to reflect that change in status at the time it occurs. It is understood by both parties that the level of benefits provided through the State Health Benefits Plan, as that Plan may be amended or modified, satisfies the requirements of Sections 1 and 2 of this article.

4. **Salary Increases**

The existing salary schedules shall be modified at each step and each rank by the following increases for each year of the agreement:

July 1, 2007: 3.25%
July 1, 2008: 3.25%
July 1, 2009: 3.25%
July 1, 2010: 3.25%
July 1, 2011: 3.25%

5. **Widow's Benefits**

Effective with the date of this Award, the Agreement shall provide a surviving spouse benefits provision that conforms with the benefits provided by the PBA agreement.

6. **Article 14, Leaves of Absence**

The FMBA's bereavement leave policy shall conform to the eligibility requirements set forth in the FOA and PBA agreement.

7. **Special Payments**

Effective July 1, 2011, unit members shall receive a 1% payment in base pay for performance of first responder duties.

8. **Military Leave Time**

A military leave provision shall be added to the Agreement. Such provision shall conform to the provision in the PBA Agreement and shall include any local policies and practices that are currently applicable in the Town's resolutions and/or standard operating procedures

9. **Article 8, Section 3 – Insurance Programs**

To the extent that retiree health benefit language this language was inadvertently omitted from the current agreement, its inclusion in the next agreement is warranted unless the Town disagrees that the omission of this language was unintentional. If so, the FMBA shall submit this issue to

grievance arbitration and shall maintain the burden to prove that its exclusion was inadvertent.

10. **Article X, Holidays**

The current practice that exists regarding Holidays for day workers shall be included into the Agreement in the absence of any dispute that such current practice does exist.

11. **Article 12, Hours**

The current practice that exists regarding the work schedule for the Inspector and Chief Inspector shall be included into the Agreement in the absence of any dispute that such current practice does exist.


12. **Article 11, Overtime**

The Town shall generate and overtime list in each firehouse. This requirement shall be subject to the Fire Chief having final review and approval over its details and procedures.

13. **Article 32, Section B, Policy Determinations**

Language shall be added to the Agreement stating that "At the sole discretion of the Chief, FMBA members may receive payment for all carried over vacation time at straight time or, in the alternative, the ability to carry over all unused vacation days at the end of the calendar year."

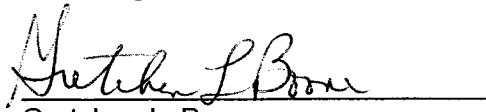
Dated: May 20, 2010
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 20th day of May, 2010, 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
Commission Expires 4/30/2014