

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of the Interest Arbitration Between:

CITY OF PATERSON,

Employer

**PATERSON FIRE OFFICERS'
ASSOCIATION, LOCAL 202,**

Employee Organization

Docket No. IA-2024-002

**Interest Arbitration
Decision & Award**

Issued: December 18, 2023

ARBITRATOR

Joseph Licata, Esq.

HEARING INFORMATION

Dates: September 21, October 26, and November 3, 2023

Time: 10:00 a.m.

Location: City Hall
155 Market Street
Paterson, New Jersey

FOR THE EMPLOYER

Susie B. Burns, Esq.
Joseph P. Horan, Esq.
PRB Attorneys at Law, LLC

FOR THE EMPLOYEE ORGANIZATION

John J. Shahdanian, II, Esq.
Phil Cranwell, Esq.
Trenk Isabel Siddiqi & Shahdanian P.C.

BACKGROUND

Demographics

The City of Paterson (“City”) is in Passaic County, New Jersey. It has a population of approximately 156,639 residents which, pursuant to N.J.S.A. 40A:6-4a, makes it a city of the first class. It has an area of 8.41 square miles. The median age is 33.2 years old. The population is comprised of 65% Hispanic, 21% Black, 8% Caucasian, 4% Asian, 1% Pacific Islander and 1% other. The City has approximately 53,159 housing units. The median value of owner-occupied housing units is \$324,800. The median household income of City residents is approximately \$47,373. Income per capita is \$22,794. A significant 21% of the population are below the poverty line.

Currently the City employs approximately 1,800 employees. There is a residency requirement for certain employees, but not for the uniformed services. The City is a civil service jurisdiction governed by Title 11A of the New Jersey Statutes Annotated and Title 4A of the New Jersey Administrative Code. Title 40A also provides statutes governing the employment of uniformed firefighters (40A:14-28 et. seq.).

Michael Walker, Battalion Chief Fire Department Operations and PFOA President, provided testimony as to the department’s operational structure and the additional EMS services provided. The fire department is staffed with 266 firefighters and 97 superior officers. The City employs 72 fire captains, 16 battalion fire chiefs and nine deputy fire chiefs. Each shift is 24 hours, i.e., 24 hours on duty followed by 72 hours off, or 2,184 hours annually. There exist four tours headed by four deputy chiefs as tour commanders. Each of the four tours is staffed by three battalion chiefs, 16 captains and 66 firefighters.

In addition, other deputy chiefs are assigned to head divisions, such as, OEM, Training, Operations and Fire Prevention. The department has three battalions defined by geographical location within the City. One battalion chief is the commander of the New Jersey Strategic Planning and Program Development. A second battalion chief oversees the EMS division. A third battalion chief oversees the Communications Division.

Each battalion is comprised of two to three firehouses and has at its disposal seven engines, four ladder trucks and one rescue apparatus. At the firehouse level, each ladder company includes a supervisor and three firefighters. A captain supervises one engine and one ladder company. Among other things, captains respond to the scene of each fire and account for the supply and maintenance of tools and equipment. Battalion chiefs are incident commanders. If a second battalion chief responds to an incident, he will go into the structure to command the response inside the structure. Four captains supervise EMS operations. This includes composing the monthly schedule which is subject to the approval of battalion and deputy chiefs. Prior to 2006, the department did not provide EMS services. Rather, uniformed civilians served as EMTs.

In 2006, due to civilian manpower issues, the City ordered all firefighters to attend the EMS Academy. Today, EMS services are exclusively provided by uniformed firefighters having seven or eight full-time ambulances (two firefighters per ambulance). Daily, firefighters may be assigned to a split shift, i.e., 12 hours EMS and 12 hours fire suppression. EMS services are in addition to the requirement that all firefighters perform first responder services at the scene of a call for fire suppression. If the ambulances are all in service, the closest ladder company responds.

There are more EMS than fire suppression calls. By the year- end 2022, there were slightly under 40,000 calls for EMS services. On average, an EMS call lasts 20 to 45 minutes while a call

for fire suppression lasts approximately two hours. The EMS statistics encompass mutual aid services involving the City and various Passaic County municipalities, including Passaic, Clifton, Haledon, Prospect Park, Woodland Park, Little Falls, Elmwood Park, as well as William Paterson University. For 2022, ambulance fees/revenues were anticipated at \$3,070,747. However, \$3,457,469 was realized in the 2022 budget. The City anticipates raising \$3,400,000 ambulance fees for 2023.

Lastly, providing fire suppression and EMS services during COVID-19 was particularly draining on the unit. Many members were hospitalized due to COVID-19 exposure, including Michael Walker. Firefighters and fire officers had to wear Tyvek suits and a respirator. In addition to the stresses of working through COVID-19, EMS responds to calls involving crimes of violence such as rape, assault and battery, domestic violence, and homicides.

The Impasse Proceeding

The City is a party to three separate collective negotiations agreements with Paterson Fire Officers' Association, Local 202 ("PFOA") (captains, battalion chiefs and deputy chiefs) (Ex. J4-J6). Each agreement runs from August 1, 2010 through July 31, 2019. Thus, the parties have been without a new agreement for approximately four and one-half years.

Due to COVID-19 and other variables, the parties did not actively engage in negotiations until 2022. Meanwhile numerous other labor unions settled contracts with the City. Initially, on May 19, 2023, the PFOA filed a Petition to Initiate Compulsory Interest Arbitration with the State of New Jersey Public Employment Relations Commission in Docket No. IA-2023-029. The Petition, as filed, defined the unit as including captains, battalion chiefs and deputy chiefs.¹ The

¹ As will be discussed, both parties stipulated to including all three supervisory titles under one agreement going forward.

undersigned was appointed in that proceeding as Interest Arbitrator. In accordance with N.J.S.A. 34:13A-16e(1), a mediation session was held on July 31, 2023. However, due to summer vacation schedules and several unforeseen events, the proceeding could not be concluded within the statutory 90-day timeframe. Thus, counsel for the PFOA withdrew the Petition in Docket IA-2023-029.

On September 11, 2023, the PFOA filed a new Petition to Initiate Compulsory Interest Arbitration in Docket No. IA-2024-002. The undersigned was appointed by lot. On September 11, 2023, the City submitted its Final Offer (Ex. J1). On September 12, 2023, the PFOA submitted its Final Offer (Ex. J2). Both offers were accepted upon receipt.

On September 21, 2023, I conducted an interest arbitration hearing in accordance with N.J.A.C. 19:16-5.6(d). The matter proceeded under conventional authority, N.J.S.A. 34:13A-16d and N.J.A.C. 19:16-5.7(e). The hearing continued October 26 and concluded on November 3, 2023. A certified court reporter hired by the PFOA appeared for the first two days of hearing. The parties elected not to use a court reporter for the third day of hearing.

On October 12, 2023, the undersigned directed the parties to submit revised Final Offers by October 20, 2023 for the limited purposes of reciting verbatim the contract language sought to be changed, or indicate whether the proposal, if accepted, would establish a new contract provision, and to state the rationale for seeking to change or establish new language.² The undersigned did not request or permit a revised Final Offer which added substantive proposals. The undersigned's October 12, 2023 email reads:

² It was explained to the parties that the requirement to state a rationale for the proposal would satisfy the need for witness testimony for the same purpose unless the parties insisted on also calling witnesses to explain their proposal(s).

Good morning.

I am writing to request that you each revise your final offer to include, where applicable, the existing contract language, followed by your proposal to change the existing language and the rationale for the change. If the proposal is for a new contract provision, please indicate same. Please submit your revised final offer by Friday, October 20, 2023 copying each other. Thank you.

The City complied with the directive and submitted a revised Final Offer on October 26, 2023 (after granting the parties an extension of time). However, the PFOA did not fully comply with this directive. Instead, the PFOA's twice revised Final Offer (October 26 and November 23, 2023) added numerous substantive provisions not included in its September 12, 2023 Final Offer. I advised the parties that I would accept the PFOA's revised Final Offer(s) only to the extent language was included which could aid in the merger of the three units into one. Other than that, the PFOA's original Final Offer of September 12, 2023 would be considered.

The City presented the testimony of Kathleen Long, Business Administrator and Javier Silva, CFO. The PFOA presented the testimony of Michael Walker, Battalion Chief and PFOA President; Orlando Rodriguez, Deputy Chief and PFOA Vice President; and Frank Petrelli, Fire Captain, Labor Chair. Additionally, the parties introduced in evidence the following Exhibits:

Exhibit No.	Date/Description of Document
JOINT EXHIBITS	
J1	9/11/23 City of Paterson Final Offer to Paterson Fire Officers' Association.
J1a	10/26/23 Revised Final Offer to Paterson Fire Officers' Association.
J2	9/12/23 Paterson Fire Officers' Association, Local 202 Final Offer to City of Paterson.
J2a	10/26/23 and 11/2/23 Revised Paterson Fire Officers' Association, Local 202 Final Offers to City of Paterson
J3	9/18/23 State of New Jersey Public Employment Relations Commission designation of Joseph Licata, Esq. as Interest Arbitrator.

Exhibit No.	Date/Description of Document
JOINT EXHIBITS (Cont'd)	
J4	City of Paterson and PFOA Captains collective negotiations agreement in effect from August 1, 2010 through July 31, 2019.
J5	City of Paterson and Paterson Uniformed Battalion Chiefs Association collective negotiations agreement in effect from August 1, 2010 through July 31, 2019.
J6	City of Paterson and Paterson Deputy Fire Chiefs Association FOA Captains collective negotiations agreement in effect from August 1, 2010 through July 31, 2019.
J7	Approved 2023 Municipal Budget.
CITY EXHIBITS	
C1	DCA/City Memorandum of Understanding, 2022 Transitional Aid.
C2	City Salary Spread sheets and Cost analysis.
C3	Request For Employment Approval, signed and approved.
C4	Census for the City of Paterson.
C5	Chart marked C-2 with additional column comparing to Union Chart.
C6	City Budget 2023.
C7	Civil Service Agencies Listing by Municipality.
C8	Emergency Medical Technician job description.
C9	Fire Fighter job description.
C10	Fire Lieutenant job description.
C11	Fire Captain job description.
C12	Battalion Fire Chief job description.
C13	Deputy Fire Chief job description.
C14	Passaic County Municipalities.
C15	Occupational Employment and Wage Statistics Survey.
C16	Military Compensation.
C17	City of Paterson Population Estimates.
C18	Google definition of 'apples to apples.'
C19	City of Paterson Fire Department Organization Chart.
C20	Wikipedia page for City of Paterson.
C21	Listing of TA Recipients 2018-2022.
PFOA EXHIBITS	
P1	PFA Firefighters MOA.
P2	PFA Firefighters CNA.
P3	Paterson White Collar CNA.

Exhibit No.	Date/Description of Document
PFOA EXHIBITS (Cont'd)	
P4	Paterson Library Supervisors CNA.
P5	Paterson DPW Supervisors CNA.
P6	Paterson DPW Blue CNA.
P7	Paterson Dispatchers CNA.
P8	Paterson Health CNA.
P9	Paterson Library Workers CNA.
P10	Paterson PBA CNA.
P11	Paterson Police SOA CNA.
P12	2022 PFD Annual Statistics.
P13	2022 NHRFR Annual Statistics.
P14	Elizabeth Fire Officers CNA.
P15	Jersey City Fire Officers CNA.
P16	Bayonne Fire Officers MOA.
P16	North Hudson Fire Officers CNA.
P17	Hoboken MOA.
P18	Newark Fire Officers CNA.
P19	Paterson Fire Dept Ordinance.
P20	Top Step – Salary Analysis 2% and 3% Increase Excel Chart.
P21	Retro Cost Out.
P21A	PFA Firefighters MOA.

The parties elected to close the record by way of submission of post-hearing briefs which were due no later than Monday, November 27, 2023. On or about November 27, 2023, I received the post-hearing briefs of counsel. Subsequently, pursuant to my request, I asked counsel to submit revised cost outs to end with the stipulated end date of their agreement, December 31, 2023. The cost outs originally encompassed the full fiscal year 2023-2024. Pursuant to N.J.S.A. 34:13A-16f(5), the Interest Arbitration Award must be issued within 90 calendar days of the Commission's assignment of that arbitrator, i.e., in this case, by on or before December 18, 2023. The instant Interest Arbitration Award is issued within the 90-day statutory requirement.

FINAL OFFERS OF THE PARTIES

Final Offer of the City of Paterson

*Effective Date September 11, 2023 (Exhibit J1)
Revised as Directed October 26, 2023 (Exhibit J1A)*

1. Term- August 1, 2019 through December 31, 2023
2. Wages - 0% percent increase, for the years 8/1/2019--7/31/2020, 8/1/2020--7/31/2021, 8/1/2021--7/31/2022. 2 % increase for the years commencing 8/1/2022 and 8/1/2023.
3. Deputy Chiefs, Battalion Chiefs and Captains into one consolidated union contract. The City agrees to the consolidation.
4. **Response to the Union’s proposal for Amended Education Benefits Provision for all ranks.**

This is an additional economic proposal. It is impossible to know the exact economic impact because the city does not know what degrees the fire officers currently have or would be inclined to pursue. The Union’s proposal is rejected in part. The City agrees to enhance the educational benefits as follows:

Current language:

Article VII

Education Benefits

- A. The employees shall receive education benefits in accordance with City Ordinance dated 12/21/73 and its amendment dated 11/8/84 and made a part of this Agreement. Copies of the City Ordinance may be examined in the Office of the Fire Director.

Proposed Language:

The sum of \$1,250.00 shall be paid to an employee for having obtained an associate degree (which requires sixty (60) credits), \$2500.00 for having obtained a Baccalaureate Degree (which requires one-hundred-twenty (120) credits), and \$3500.00 for having obtained a master’s degree. This amount will not be added to the employee’s base salary. The employee must have earned the degree from an accredited institution recognized by the New Jersey Board of Higher Education and must have graduated with an overall average grade of “C” or better or equivalent grade for each course. The only areas of study that will entitle an employee to this education benefit are the below:

- Fire Science.
- Fire Service Administration.
- Foreign languages.
- Public Safety Leadership.
- Public Administration.
- Homeland Security.
- Nursing.

Rationale:

The Captains' contract in Article VII Education Benefits deals with this issue. Firefighters and officers have an independent incentive to pursue a degree because they get a higher promotional score from the CSC for same, and it helps them move up the ladder so they can retire near the pinnacle and at a high level of compensation. Also, although they have to retire at age 65 from PFRS, they can retire after 25 years of service; having a college degree can allow a firefighter transition into a second career once they retire. Moreover, the City does not believe that the additional degrees for which the Union seeks stipend serve to make the fire officers better officers.

5. Response to Union's proposal that Comp Time Bank Increased to one hundred Hours for captains, battalion chiefs and deputy chiefs is rejected.

This is an additional economic proposal.

Proposed Language:

No change to the current contract language.
Retain the forty-eight (48) hour maximum on Compensatory Time Off (CTO).

Rationale:

The Captains' contract provides in Article IX Other Payments, A.3., that overtime (OT) will be paid in cash or compensatory time, at the employee's discretion. It further provides that Compensatory Time Off (CTO) can accrue to a maximum of 48 hours. At 48 hours, the employee cannot get comp time and they can only get paid overtime in cash. Per A.10., an employee who does not use their comp time within 1 year gets it converted to cash.

It should be noted that generally, employees try to keep a balance of comp time so when they retire, they get paid for their accumulated comp time, and typically it is paid at a higher rate from when it is earned as the employee's salary will go up over time. Employees who are captains, battalion chiefs and deputy chiefs are close to retirement. At the State Parole Board, they did away with comp time for this reason, and overtime would only be compensated in cash.

6. Response to the Union's proposal for captains, battalion chiefs and deputy chiefs. Increase Bank Days to 20 But No Additional Payout. Payout for Bank Days Remains at 11 Days and Holiday Pay Increased to 48 Hours is accepted in part and rejected in part.

The Captains' contract provides in Article XI Vacation-Holiday-Personal Leave Days, that an employee gets 17 days each calendar year to be used for vacation, holiday, and personal days. Of the 17 days, two are personal days. Only 11 days can be carried over to the next year if unused. Employees are guaranteed 4 days of leave during the summer, from late June to early September. If the employee works a holiday, in lieu of being paid when working a holiday, they will get 36 hours of holiday pay in their base salaries.

The City is amenable to allowing the carryover of 20 days with no additional payout.

Current Language

Article XI, Vacation-Holiday-Personal Leave Days, A (2) of the contract reads as follows:

2. Employees may carry over up to eleven (11) leave days to the following year.

Proposed Language

The City Agrees to the Union's request to amend Article XI, Vacation-Holiday-Personal Leave Days, A (2) of the contract as follows:

2. Employees may carry over up to twenty (20) leave days to the following year with no additional pay out.

Article XI, Vacation-Holiday-Personal Leave Days, Section C, (D) provides "Effective January 1, 2016, in lieu of an employee receiving holiday pay when working a holiday, holiday pay will be equally distributed by providing all employees with thirty-six hours of holiday pay in their base salaries.

The City rejects increasing holiday pay from 36 hours to 48 hours and proposes the language not be changed.

Rationale: There is no reason for said increase and it would result in increased costs.

7. Response to the Union’s request for Leave Days for Captains to be assigned by seniority.

The City is amenable to assigning leave days by seniority. The Union has not proposed language. The city proposes adding a sentence to Section XI, B (2) In the event that there are multiple requests for leave on the same day, the requests shall be granted in accordance with seniority.

8. Response to the Union’s proposal Man for Man Coverage (Release Time) for Captains.

No change to current contract terms.

9. Response to Union’s proposal for Overtime for Battalion Chiefs.

No change to contract terms.

Overtime is governed by the FLSA

Rationale:

To be entitled to overtime pay per the FLSA, the employee is required to be actually engaged in the prevention, control and extinguishment of fires or respond to emergency situations. That is to say, the employee is not entitled to overtime for administrative type work.

10. Response to Union’s proposal for ability to relinquish EMS Certification for all ranks.

This change is rejected.

Rationale

The Union has not cited any rationale for not keeping them. The EMS certifications are a benefit to the department given the fire department performs EMS functions.

The Following Additional Modifications To The Contract Are Proposed By The City.

1. Longevity- Eliminated for new officer promotions

Add a subsection C to Article VI, Longevity

All officers promoted after December 1, 2023 shall not be entitled to longevity.

Rationale: Longevity was given up for the fire fighters for new hires.

2. Paterson Fire Officers Association (Captains) – Article I Recognition, B. Management Rights

Paterson Uniformed Battalion Chiefs’ Association – Article I Recognition, B. Management Rights

Paterson Deputy Fire Chiefs’ Association – Article I, B. Management Rights

Proposed New Language to be added to Article I, Section A

The City of Paterson is a civil service municipality. This means that it follows the New Jersey Civil Service Commission’s human resources (HR) management system to the extent it applies to personnel issues affecting its workforce, including all classified positions in the Fire Department. The parties acknowledge and agree that the administrative and procedural provisions and controls of Civil Service Law and the Rules and Regulations promulgated thereunder, are to be observed in the administration of this Agreement, except to the extent that this Agreement pertains to subjects not therein contained or where this Agreement is contrary to, or in conflict with such provisions and controls and deviation from such rule or control is statutorily permitted. Nothing herein shall be construed to deny any individual employee his rights under the Civil Service Law or Regulations.

Pursuant to N.J.S.A. 40A:14-9, paid employees in a municipal fire department are required to be members of the State of New Jersey’s Police and Firemen’s Retirement System (PFRS). The parties acknowledge and agree that the administrative and procedural provisions and controls of the State of New Jersey, Division of Pensions and Benefits with respect to member in and retirement from the PFRS are to be observed in the administration of this Agreement, except to the extent that this Agreement pertains to subjects not therein contained or where this Agreement is contrary to, or in conflict with such provisions and controls and deviation from such rule or control is statutorily permitted. Nothing herein shall be construed to deny any individual employee his right to retire under PFRS.

Rationale

The City of Paterson is a New Jersey civil service municipality, meaning it follows the New Jersey Civil Service Commission (CSC) system of human resources (HR) management of its staff, and firefighters are classified, civil service job titles. That being the case, there should be express language added to all three contracts that make the City’s ability to rely on CSC statutes, regulations, and decisions beyond reproach to the extent they apply to a particular issue.

3. Paterson Fire Officers Association (Captains) – Article I Recognition, D. Legal Defense of Employees

Paterson Uniformed Battalion Chiefs’ Association – Article XVII Legal Defense of Employee

Paterson Deputy Fire Chiefs’ Association – Article XIX, Legal Defense of Employees

Current language

The City shall provide for the legal counsel in the defense of an employee in accordance with N.J.S.A. 40A:14-155 whenever an employee is a defend ant in an action or legal proceeding arising out of or incidental to the performance to his/her duties including false arrest, detention, imprisonment, malicious prosecution, libel, slander, defamation or violation of rights or privacy, wrongful entry or eviction or other invasion of privacy.

Proposed New Language:

The City shall provide for the defense of a employees in accordance with N.J.S.A. 40A:14-28. The City is only required to provide for the defense when it arises out of or is incidental to the performance of duty. The City will also be guided by N.J.S.A. 59:10-4 in the New Jersey Tort Claims Act as to whether the City is obligated to provide such a defense. The City may reserve the right not to provide a defense to an employee when the employee’s actions are outside the scope of his or her employment or constitutes a crime, actual fraud, actual malice, or willful misconduct, per N.J.S.A. 59:3-14.

Rationale

The Captains’ contract cites to “N.J.S.A. 40A:14-155,” which is the statute in Title 40, Municipalities; Police that deals with defense of police officers when they are sued. The corresponding statute for firefighters is N.J.S.A. 40A:14-28. So the citation needs to be fixed

4. Paterson Fire Officers Association (Captains) – Article XXII Prior Practices

Paterson Uniformed Battalion Chiefs’ Association – Article XXI Prior Practices

Paterson Deputy Fire Chiefs’ Association – Article XXIII Prior Practices

Proposed New Additional Language- subsection C:

To be a “right, benefit or privilege enjoyed by employees,” the thing at issue must be a common practice within the Fire Department, such as an established protocol. The employee must be able to demonstrate that what is being claimed regularly happens, and something that has only happened once or very infrequently would not suffice. Employees are only entitled to

the rights and benefits provided by the labor agreement to which they are a member, and to no other labor contract to which they are not a member.

Rationale

See e.g. In the Matter of City of Newark and Police Superior Officers' Association of Newark, N.J., Inc., 2000 NJ PERC Lexis 190, * 34-35 (July 20, 2000) (citing Somerville Boro., P.E.R.C. No. 84-90, 10 NJPER 125, 126 (P15064 1984), quoting from Elkouri and Elkouri, How Arbitration Works, p. 391 (BNA 1973) (holding, for there to be an “established practice,” PERC “has defined [a] past practice as a course of events . . . which is repeated, unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties.”); accord In the Matter of Borough of Milltown and PBA Local 338, 2021 NJ PERC Lexis 27, * 24 (March 26, 2021); In the Matter of Township of Middletown and PBA Local 124, 2006 NJ PERC Lexis 245, * 12 (June 6, 2006).

5. Paterson Fire Officers Association (Captains) – Article XVIII Check-Off

Paterson Uniformed Battalion Chiefs' Association – Article X Dues Checkoff

Paterson Deputy Fire Chiefs' Association – Article II Dues Checkoff

Proposed New Language:

Employees shall be eligible to withdraw their membership only as of July 1 of each year provided the notice of withdrawal is filed prior to July 1 with the responsible payroll clerk of the City. Unless the employee withdraws authorization for the deduction of union dues, the City will continue to deduct dues. The movement of an employee from one title to another title and/or from one unit to another unit will not affect dues deduction unless the new title or unit is not represented by the Union.

Rationale

The Captains' contract's article on union dues has no reference to the WDEA in light of the U.S. Supreme Court's decision whereby union members can withdraw from the union. This is not surprising due to the age of the current contracts. The City proposes adding a provision in the contracts that the members can only withdraw if they give notice by a specific date.

Final Offer of the PFOA

Effective Date September 12, 2023 (Exhibit J2)³

1. Term: 4 1/2 Years: August 1, 2019, through December 31, 2023.
2. Wages: See attached grids (6) which represent the last proposal made by Local 202. These grids reflect the waiver of retro, except for 2023. The City has never responded to this proposal.

In the alternative, Local 202 is willing to accept annual 3% salary increases for duration of agreement, with the appropriate full retroactive payments.

3. Merge three individual contracts for Captains, Battalion Chiefs and Deputy Chiefs into one unified Collective Negotiations Agreement.
4. Amend Educational Benefits provision to include the following language:

In addition to his/her base salary and other compensation, a firefighter shall be paid the sum of one thousand two hundred fifty dollars (\$1,250) for having obtained an Associate's Degree, two thousand five hundred dollars (\$2,500) for having obtained a Bachelor's Degree, or three thousand five hundred dollars (\$3,500) for having obtained a Master's Degree in one of the following courses of study:

1. Fire Science
2. Fire Service Administration
3. Social Sciences (Psychology, Sociology, Criminology)
4. Foreign Language Degrees
5. Public Safety Leadership
6. Law
7. Computer Science
8. Finance or Accounting
9. Political Science
10. Public Administration
11. Homeland Security

³ Revised PFOA Final Offers of October 26 and November 2, 2023 to be considered to the extent language may aid with the merger of the three supervisory units.

12. Education

13. Nursing

14. Any other course of study reasonably related to the job functions of a firefighter. The City shall be responsible for determining what courses of study are reasonably related to the job functions of a firefighter.

5. Captains contract terms will be amended as follows:

- a. Comp Time Bank Increase to one hundred hours with no payout;
- b. Leave Days assigned by seniority;
- c. Man for man coverage (release time) any time during shift. Not just early/late relief;
- d. Ability to relinquish EMS certification;
- e. Holiday Pay increased to 48 hours;

6. Battalion Chiefs contract terms will be amended as follows:

- a. Comp Time Bank Increase to one hundred hours with no payout;
- b. Ability to relinquish EMS certification;
- c. Holiday Pay increased to 48 hours;
- d. All overtime paid at time and one-half rate.

7. Deputy Chiefs contract terms will be amended as follows:

- a. Comp Time Bank Increase to one hundred hours with no payout;
- b. Ability to relinquish EMS certification;
- c. Holiday Pay increased to 48 hours;
- d. All overtime paid at time and one-half rate.

8. Change health care provisions to mimic Article VII of PFA Local 2's MOA entered into with the City on May 31, 2022 (A copy of which is attached).

All other proposals made by the City are rejected.

Revised Final Offers of the PFOA

*October 26 and November 2, 2023
(Not accepted)*

THE POSITIONS OF THE PARTIES⁴

The Position of the City

The City's resources are limited. Presently, the City has only three revenue sources: permit fees, municipal court fines, and property taxes. Regarding the municipal court, the City normally receives \$5 million in revenue from fines. For the past decade, the City has been a "city in distress." The reason for this label is that the City has a structural deficit of \$20-\$25 million and must rely upon aid from the state to bridge this substantial shortfall. As a result, the City receives transitional aid from the State of New Jersey, specifically from the Department of Community Affairs ("DCA"). There are no other cities of the first class in the state that receive transitional aid.

In exchange for transitional aid, the City must surrender its fiscal autonomy to the DCA. Paterson is subjected to total fiscal oversight and financial control by the state. Since the City desperately needs this financial assistance from the state, it has no choice but to submit to state control.

The City is one of about a dozen municipalities in the state that qualify for transitional aid. The City is considered a "legacy" municipality with respect to its fiscal situation because the City has been receiving state aid for so long. As a result, the state is continually placing additional pressure on the City to get off transitional aid. The state has made it clear that the City cannot be

⁴ The briefs submitted by the parties are much more comprehensive and will be fully considered and addressed in more detail herein.

on transitional aid indefinitely. In that light, the DCA has been decreasing the transitional aid Paterson receives each year, other than last year because the City experienced increased costs that the DCA knew were outside of the City's control.

In order to receive transitional aid from the state, a municipality must also enter a Memorandum of Understanding ("MOU") with the state which gives the state fiscal oversight over the recipient of state aid. There is no negotiation over the terms of the MOA with the DCA; the terms are whatever the state says they are. The DCA may, at its sole discretion, withhold funds from the final payment of transitional aid where the City is in substantial compliance, but has otherwise violated certain terms of the MOU. The MOU also has several significant limitations on spending contained therein. In that regard, the state can refuse to provide transitional aid where the City allows or approves compensation increases that are not sustainable. The MOU further provides that if the City approves any individual employment contract or any collective negotiation agreement that increases annual compensation for the employee or group of employees by more than 2% annually, on average during the term of the agreement, the City may become ineligible for future aid. The goal of the MOU is to eliminate aid to the City in order for the City to become self-sufficient.

The oversight is all encompassing. Once a month, the City and the DCA will review all the expenditures to date. Javier Silva, CFO, supplies all the City's accounting information to the DCA. The DCA's role is not passive. The expenditures are approved prior to being included in the budget. The DCA reviews and approves all expenditures before they are even put before the City counsel. The City cannot include anything in its budget that is not approved by the DCA. The DCA freely exercises its authority to reject items. On a quarterly basis, the DCA reviews

actual budget expenditures to make sure the City is on track which includes collective bargaining agreements.

Every Tuesday, the City meets with the DCA to go over financial best practices regarding pending issues. The City's weekly meetings with the DCA last between one to three hours. In these meetings, the City is required to provide all its basic financial data to the DCA each year and then continually throughout the year on nearly a weekly basis. Then, the DCA reviews the information which serves as the basis for the topics discussed during the meetings. The DCA constantly compares the City's budget to its actual spending and every component of the City's finances is discussed. These discussions include the City's labor agreements, as well as the City's shared-services agreements with other municipalities and the same for its PILOT (Payment in Lieu of Taxes) programs. Overall, the purpose of the meetings is to provide detailed oversight by the state into every single aspect of the City's finances. The number one item on the agenda is the CBAs and how to control and lower the overall economic costs of same.

Salary increases and the replacement and/or hiring of new personnel are scrutinized as salaries represent 75% of the City's \$300 million budget. Of the remaining 25%, 15% of it is not discretionary spending. The City has met with the DCA and advocated for paths to settle this contract. The DCA is not supportive of the increases (and total economic costs) proposed by the Union. The DCA believes the City has already over-extended itself beyond its financial capabilities.

Most of the fire officers earn more than \$120,000 per year, and some earn \$213,000 per year. The fire officers are not required to have a college degree and they are the highest paid employees in the City. The average DPW employee only earns \$35,000 to \$45,000 per year. In

fact, the fire officers earn even more than the police supervisors. In contrast, the average median household income in the City is \$47,373 and the average taxpayer in the City earns \$22,794 which are both reflected on Exhibit C4, the official census data for the City. The fire officers earn approximately five times what the average City taxpayer earns a year, yet still seek a windfall increase in salary.

The raises are only one component of the fire officers' total compensation. They also receive step increments and longevity. The concept of longevity is a tool to keep an employee from leaving a municipality. Moreover, when fire officers retire, they receive pensions equal to 60% of their base pay for life. Fire officers also receive health insurance benefits from the City, and these remain in place when they retire. The health insurance coverage that the City provides to its employees is considered a "Cadillac Plan" because it is very generous. The cost to the City for the plan is approximately \$12,000 per individual and \$25,000 for families. This is an additional benefit and expense to the City beyond the employee's salary. When the fire officers retire, the City still must contribute to their health insurance coverage as provided by the state, as well as to their pensions. Fire officers can retire with 65% of their base pay and collect their pension benefits until their death. The City also must pay towards the fire officers' pension benefit after they retire.

The proposal by the City gives each fire officer a substantial pay raise. For example, Captain Cintron's salary will increase from \$132,100.79 to \$137,437.67 with a retro of \$4,865.71. Battalion chiefs will receive \$7,000 raises on average and between \$5,000 to \$5,500 in retro payments. Deputy chiefs' salary will be raised from \$182,454 to \$215,309 and retro payments of \$6,500 to \$7,600.

The fire officers are already the highest paid employees in the City. These pay raises are more than fair; yet the Union is demanding exorbitant raises on top of their already very lucrative salaries. Furthermore, they are seeking retro which the City can neither pay for nor bond. Moreover, an award of their demands jeopardizes the transitional aid that the City desperately needs. Neither a 3% raise nor the Union's proposed chart are sustainable. The Union's chart seeks a greater than 3% raise and has an even more severe impact on future promotions because it essentially dates back in longevity that post-2016 fire officers had given up. The Union has not met their burden of proof with respect to their other economic and non-economic demands, and the City has presented testimony regarding the non-feasibility of their additional demands.

The application of the law to the situation at hand mandates a rejection of the Union's proposals and adoption of the City's Final Offer. For all of the reasons set forth above, the City of Paterson respectfully requests that the Arbitrator make an award that will respect the difficult financial situation that the City is in and, as a result, will respect the statutory oversight and control that the State of New Jersey is exercising on the City herein, through the Department of Community Affairs, regarding the key economic issues in this labor dispute, and realize and find that the fire officers' position is obviously detached from the reality of the current circumstances in the City, and that their position is neither reasonable, sustainable nor in accord with the DCA's financial determinations regarding what is needed for a municipality in distress, i.e., the City, which is being stabilized and placed onto a painful path of fiscal recovery by the state, and that pain must be felt not just by the City's leaders and its residents, but also by the fire officers who are the highest paid public employees in all of City government.

The Position of the PFOA

For more than four years, the Association has implored the City to come to the bargaining table and engage in reasonable dialogue concerning the terms and conditions of employment. The PFOA has made numerous fair and reasonable offers to the City, all of which were ultimately rejected. Even though the previous collective negotiations agreement (“CNA”) expired in 2019, the City continuously moved the goalposts by refusing to even begin negotiations until December 2021, by offering egregious terms and demanding givebacks while rejecting commonsense proposals from the Association that would have substantially satisfied both parties’ wants and resulted in significant cost savings for the City. Frustratingly to the Association, the City has hidden behind its transitional aid status to muddy the waters and delay any resolution, leaving the impression that the state is to blame for the City’s underhanded tactics, whereby they pay fire officers less than their peers throughout the state. Despite the many attempts by the PFOA to negotiate a successor CNA, the City’s refusal to engage in good faith negotiations forced the matter to be submitted to binding interest arbitration.

As will be demonstrated *infra*, nothing produced in the record supports the City’s position that it should not be required to provide compensation to the members of the Association comparable to their peers throughout the region. Rather, even the evidence submitted by the City demonstrates that the City should have and could have accepted any of the reasonable offers the Association has put forth. To allow the City to avoid this responsibility while all other bargaining units in Paterson (with the single exception of the PBA) have settled their CNAs with nothing less than 2% annual increases and full retroactive payments, is clearly inequitable.

For this reason, the PFOA respectfully contends that the only reasonable determination that can be made, would be to require Paterson to accept the salary guide proposed by the Association because it accomplishes the City's stated goal of financial savings and stability, while providing the membership of the Association with fair compensation comparable to their peers. Further supporting the only reasonable determination is the fact that the state monitor from the Department of Community Affairs, who oversees Paterson's finances, approved a similar salary grid for the Paterson Firefighters Association ("PFA"). The City has, in the within arbitration, inexplicably refused to agree to the PFOA's offer, which would result in salary guide and salary increases fair and equitable in comparison to other municipalities, while foregoing retroactive payments and saving the City millions of dollars.

Instead of reaching the equitable decision to accept the PFOA's offer, the City has instead demonstrated their continued bad faith negotiation tactics, by responding to the PFOA with a series of poison pill provisions, gutting compensation for future fire officers, demanding an unfair tiered salary structure, and ignoring the four years the members of the Association have worked without a raise, during one of the greatest periods of inflation in recent history. Furthermore, the Association respectfully contends that its Final Proposal/Offer in regard to the merging of three separate contracts contains proposed commonsense contract language that accomplishes the merger, provides uniformity, certainty and contains language similar to that contractual language which the City agreed to with the PFA.

As will be demonstrated herein, based on the overwhelming testimonial and documentary evidence, there is no valid reason for the City not to settle on reasonable terms before the CNA expired. Unfortunately, the record is replete with evidence of the City's unfair negotiation tactics,

including engaging in a pattern of delay, which allowed contracts to expire for years and permitted the City to delay any expenditure for raises, thereby permitting them to invade monies already reserved for the PFOA and now claim they are bereft. Such chicanery cannot be countenanced by the Arbitrator and the City must be held to account for its bad faith.

ANALYSIS

The Scope of the Proceeding-Rejection of PFOA's "Revised" Proposals

Initially, I preface the commentary which follows by noting that the issue presented by the PFOA's revised Final Offers is moot in that, as will be discussed *infra*, no economic proposals from either party will be awarded other than a determination of the parties' respective salary proposals. Also, I informed the parties that I would consider the PFOA's add-ons to the extent that language helpful to the merger of all three units is presented. As to the balance of the issue in dispute, I must reject any other add-on presented by the PFOA after it submitted its original September 12, 2023 Final Offer.

On October 12, 2023, the undersigned directed the parties to submit revised Final Offers by October 20, 2023 while clearly noting that the request was for reasons of arbitral economy, i.e., reciting verbatim the contract language sought to be changed, or indicating whether a new provision was sought, and to state the rationale for seeking to change or establish new language. The undersigned did not request a revised Final Offer which added substantive proposals. The undersigned's October 12, 2023 email unambiguously reads:

Good morning.

I am writing to request that you each revise your final offer to include, where applicable, the existing contract language, followed by your proposal to change the existing language and the rationale for the change. If the proposal is for a new contract provision, please indicate same. Please

submit your revised final offer by Friday, October 20, 2023 copying each other. Thank you.

The City complied with the directive and submitted a revised Final Offer on October 26, 2023 (after I granted the parties an extension of time). The City added the requested context to its September 11, 2023 Final Offer and did not attempt to add a new proposal. However, the PFOA did not fully comply with the same directive.

Instead, the PFOA's revised Final Offer added substantive provisions not included in its September 12, 2023 Final Offer. Due to time constraints and a lack of concern that such an issue would even arise, the undersigned did not immediately catch the add-ons. Nor did the City counsel. Rather, after noticing that the PFOA's first revised Final Offer did not comport with what I had asked for, i.e., including verbatim contract language sought to be changed and stating a rationale for either a modification to an existing proposal, or for a newly stated proposal, I directed the PFOA to submit a second revised Final Offer for that limited purpose. Unfortunately, I did not notice that the PFOA had included add-ons in its October 26, 2023 first revised Final Offer.

The PFOA submitted a second revised Final Offer on November 2, 2023, one day prior to the scheduled final day of hearing. At that time, counsel for the City discovered the PFOA's add-ons included in its October 26, 2023 first revised Final Offer. As noted by City counsel in an email of the same date.

There are numerous language changes proposed that were not part of the Union's final offer, and thus, we object to same as the revised offer was only to include specific language proposals as well as rational for the changes proposed in the final offer. For example, the Union's final offer did not propose changes to the grievance procedure, fire officer's rights, work week, longevity, night differential, overtime assignment requirements, recall, leave increments, vacation precedents, transfers, mutual swaps, wash up time or health benefits. A copy of the Union's original final offer is attached.

By way of reply to the City's email, I advised the parties as follows: "I have not had time to review the document. We can discuss tomorrow with the caveat that the substance of both parties' final offers should not have changed since the original submissions. Have a good night." A brief telephone conversation was held while the undersigned was in route to the November 3, 2023 hearing. In it, I made it clear that the undersigned's original request for revised Final Offers was limited to including the verbatim contract language sought to be changed (or indicate it was for a new provision) and to put forth a rationale for its adoption. Later that same day, I concluded the hearing and advised the parties that I would accept the PFOA's revised Final Offer(s) only to the extent language was included which could aid in the merger of the three units into one. Other than that, the PFOA's original September 12, 2023 Final Offer would be considered for the substance of the PFOA's proposals.⁵

N.J.A.C. 19:16-5.7(g)2 establishes that Final Offers must be submitted at least ten (10) days prior to the hearing. The purpose is obvious – the parties need time, as compressed as the time may be, to prepare for the hearing based on the Final Offers submitted. The same regulation states that "the arbitrator may accept a revision of such offer at any time *before the arbitrator takes testimony or evidence . . .*" The PFOA's substantive add-ons were submitted on October 26, 2023, the day of the second day of hearing, well after testimony and evidence had been taken on September 21, 2023. In addition, there is a monumental contrast between the PFOA's September 12, 2023 original submission and the revised Final Offers of October 26, 2023 and

⁵ On November 6, 2023, I sent correspondence in error stating that I would reject the PFOA's November 2, 2023 second revised Final Offer and accept the October 26, 2023 Final Offer (prior to discovering that the PFOA's November 2, 2023 second revised Final Offer was identical to the October 26, 2023 Final Offer and well beyond the scope of the original submission.

November 2, 2023. In fact, the PFOA's September 12, 2023 Final Offer is two (2) pages in length. In contrast, the October 26, 2023 first revised Final Offer is four (4) pages, the difference being add-ons. The November 2, 2023 second revised Final Offer is twenty-five (25) pages. Just a few examples of substantive add-ons outside the scope of the undersigned's request for revised final offers are as follows:

ARTICLE II Grievance Procedures – Replace with language identical to the Firefighters Association's most recent CAN for uniformity and certainty, improving relations between City and Labor.

Article V – Salary and OTHER PAYMENTS-RENAME TO MERGE ARTICLES V,VI, VII,VIII & IX -OTHER PAYMENTS. STREAMLINES CONTRACT, TO ELIINATE UNNECESSARY ARTICLES.

Section F – Longevity – Eliminating Section tied to a negotiation with another, separate labor organization to protect a benefit previously agreed upon between the Parties.

Section K – Compensatory Time – Replacing Subsection 5, which required the City to pay cash annually at the rate of time and a half for unused CTO, with a provision allowing Fire Officers to accumulate a bank of up to 480 hours of CTO – with no option for payout upon retirement – to be used only as time off during the employee's career. Any CTO accruing above the 480-hour maximum bank must be used in the year it was earned. This is a win/win proposal turning a costly annual cash distribution for the City into a non-monetary form of compensation, without a costly payout provision.

Section L – Certifications – Increase sum of pay for each Certification from \$2000.00 to \$2500.00, payable in twenty-six equal payments throughout the year. Minor financial enhancement incentivizing employee participation in specialized units that enhance the City's capabilities and provision of lifesaving services. Additional provision allowing Fire Officers who no longer participate in EMS to relinquish their EMT Certification. This makes sense because it benefits the City and Department by allowing precious cash resources required to train personnel in EMS to be diverted to personnel directly performing EMS. It will also relieve some Fire Officers from onerous EMS training requirements, enhancing their ability to effectively supervise everyday firefighting operations, ultimately benefiting the community.

Article XI – Leave –

Amended to allow Tour Commanders the flexibility to grant leave in increments of 4 hours. This provision can help ensure manpower is appropriately allocated and available. Further, for the employee, leave can be utilized in a more useful manner, enhancing quality of life, especially when circumstances arise requiring less than 24 hours of leave. This non-monetary change would not

adversely affect regular vacation for employees taking 24-hour vacation days, because requests for 24-hours off will take precedence over shorter requests for leave, regardless of seniority.

Amended to provide that leave is granted and/or allotted according to seniority, within each rank. This provision ensures fair leave practices and enhances morale.

Article XVII – Other Conditions of Employment –

Section D – Transfers - When two or more Fire Officers request a transfer to the same assignment, seniority will be the deciding factor, unless another legitimate managerial reason exists and is expressed in writing to the PFOA and the requesting member(s). Ensures harmonious relationship between Department and City management and members of the Association, reducing the likelihood of punitive or unwanted transfers, without valid managerial justification.

Section E – Mutual Swaps – Current practice is that members must swap an entire 24-hour tour. Amend to allow swaps of periods of time between 4 hours and 24 hours. Such practice will allow members and tour commanders greater flexibility in staffing and will not adversely affect manpower or operations, and improve morale, as most departments allow similar practices.⁶

Lastly, many of the PFOA's revised proposals are taken from the PFA MOU which was executed in May 2022 and from the expired police union contracts. No reason has been presented as to why such proposals could not have been timely and fairly presented in this proceeding.

In Middlesex Cty., P.E.R.C. No. 97-63, 23 NJPER 17 (¶ 28016 1996), aff'd P.E.R.C. NO. 98-46 (¶ 28293, 1997), WL 34821259 (1997), PERC upheld an interlocutory decision of Arbitrator Karl Curtzman barring the County from belatedly adding issues/proposals to the interest arbitration proceeding beyond the five-day period for doing so. In upholding the interlocutory decision of Arbitrator Kurtzman, PERC reasoned:

[W]e assumed for purposes of analysis that N.J.A.C. 19:16-5.5 may be relaxed, or its time periods extended, in accordance with N.J.A.C. 19:10-3.1(a) and (b). We so hold now. We will defer to an arbitrator's decision to admit or exclude additional issues unless we find an abuse of discretion. As discussed in Middlesex, the County has not demonstrated why N.J.A.C. 19:16-5.5(a) and (b) should be relaxed, and we affirm the arbitrator's ruling. The County had a statutory obligation, once the PBA filed its petition, to engage in interest arbitration with the PBA negotiations unit

⁶ To the extent the PFA MOU influenced the substantive revisions, suffice it to say that the PFA MOU was signed on May 17, 2022 - well prior to the original September 12, 2023 submission date.

within the parameters of N.J.S.A. 34:13A-14 to -21 and Commission rules designed to accomplish the legislative goal of resolving disputes expeditiously. It was not entitled to delay its responses concerning the PBA unit until it determined its position with respect to all other units. We add that some of the issues submitted on August 1 appear to be PBA-specific. The County has not explained why it had to wait until it finalized its proposal for other units to submit these issues.

Like PERC's reasoning in Middlesex, here, I see no reason the PFOA could not have submitted the revised proposals on September 12, 2023. As of October 26, 2023, when the PFOA submitted its first revised Final Offer which did not comply with my directive, the second of three hearing days was underway. By the time the City and undersigned detected the discrepancy on November 2, 2023, the City had rested its case and the third and final day of hearing was set to commence.

Since the PFOA's noncompliant revised Final Offer was submitted well after the commencement of the evidentiary portion of this proceeding, N.J.A.C. 19:16-5.7(g)2 does not even impart discretion on the undersigned to relax the rules: "the arbitrator may accept a revision of such offer at any time *before the arbitrator takes testimony or evidence . . .*". Hence, I do not believe that I even have the discretion to accept the PFOA's noncompliant revised Final Offers. Yet, even if I did, I would not accept the revised Final Offers, absent consent and, here, there is an understandable objection raised by the City. Since it was never the undersigned's intent to request a substantive change in the parties' original proposals, and since acceptance would be prejudicial to the City, I will consider the PFOA's September 12, 2023 Final Offer as the PFOA's substantive proposals and the revised Final Offers for language changes to aid with the merger of the three units.

The Interaction of the Interest Arbitration and Special Municipal Aid Laws in this Proceeding.

The Interest Arbitration Law

N.J.S.A. 34:13A-14 contains the Legislature's "Findings, Declarations Relative to Compulsory Arbitration Procedure":

The Legislature finds and declares:

- a. Recognizing the unique and essential duties which law enforcement officers and firefighters perform for the benefit and protection of the people of this State, cognizant of the life threatening dangers these public servants regularly confront in the daily pursuit of their public mission, and fully conscious of the fact that these public employee, by legal and moral precept, do not enjoy the right to strike, it is the public policy of this State that it is requisite to the high morale of such employees, the efficient operation of such departments, and to the general well-being and benefit of the citizens of this State to afford an alternative, expeditious, effective and binding procedure for the resolution of disputes; and
- b. It is also the public policy of this State to ensure that the procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public; and
- c. Further, it is the public policy of this State to prescribe the scope of the authority delegated for the purposes of this reform act; to provide that the authority so delegated be statutorily limited; reasonable, and infused with stringent safeguards, while at the same time affording arbitrators the decision making authority necessary to protect the public good; and to mandate that in exercising the authority delegated under his reform act, arbitrators fully recognize and consider the public interest and the impact that their decisions have on the public welfare, and fairly and reasonably perform their statutory responsibilities to the end that labor peace between the public employer and its employees will be stabilized and promoted, and that the general public interest and welfare shall be preserved; and therefore,
- d. To that end the provisions of this reform act, providing for compulsory arbitration, shall be liberally construed.

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

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

- (1) The interests and welfare of the public. . . .
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally;
 - (a) In private employment in general
 - (b) In public employment in general
 - (c) In public employment in the same or similar comparable jurisdictions
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulation of the parties.
- (5) The lawful authority of the employer. . . .
- (6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy . . . 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 employee's contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services; (b) expand existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies have been designated by the governing body in a proposed local budget.

- (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.

The remedy for a party dissatisfied with an interest arbitration award is to file an appeal with the Commission. In reviewing a challenge to an award, PERC determines whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues. Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶ 28131 1997); N.J.A.C. 19:16-5.9. An award may be vacated if the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Cherry Hill Tp.; cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978). Subsequently, a party still dissatisfied

may appeal PERC's decision to the Appellate Division and, if entitled to, or approved, to the New Jersey Supreme Court.

The above represents the legislature's delegation of determining police and fire contract impasses to arbitrators and the Commission on appeal. The involvement of any other state agency in the resolution of such an impasse is not set forth in the interest arbitration laws.

The Special Municipal Aid Law

The Legislature passed N.J.S.A. 52:27D-118.24 et. seq., i.e., the "Special Municipal Aid Act" which applies to the City (and has for the past 15 years). N.J.S.A. 52:27D-118.25 explains the legislative findings on why special municipal aid may be needed for these municipalities:

The Legislature finds that certain large and small municipalities in this State experience fiscal distress as a result of insufficient collection of tax revenues, insufficient collection of other revenues, over-anticipation of revenues of prior years, or from other causes; that these municipalities function within stringent budgetary constraints, straining their revenue sources to provide basic public services for their residents; that these municipalities may benefit from the expertise of the State in recommending fiscal recovery measures designed to alleviate the fiscal distress that they are currently experiencing; and that short-term State assistance, in the form of state grants and loans, may provide the temporary revenue bridge these few municipalities need in order to overcome their current difficulties and retain their financial stability.

The Legislature, therefore, declares that it is fitting and proper, and within the public interest, to provide loans and grants to certain municipalities experiencing budgetary difficulties in generating adequate local revenues in order to assist those municipalities not only in meeting their immediate budgetary needs, but also to enable them to regain their financial stability. [Emphasis supplied.].

Pursuant to this Act, the "Director" is the "Director of the Division of Local Government Services ("DLGS") in the Department of Community Affairs ("DCA"), the "Board" is the "Local Finance Board in the DCA and "Eligible [M]unicipality" is a "municipality that is qualified to receive assistance under P.L. 1978, c. 14 (C: 52:27D-178 et. seq.), a municipality under the

supervision of the Local Finance Board pursuant to the provisions of the ‘Local Government Supervision Act (1947),’ P.L. 1947, c. 151 (C: 52:27BB-1 et. seq.), . . . or a municipality identified by the director to be facing serious fiscal distress.”

N.J.S.A. 52:27D-118.30a empowers the state/DCA to create a Financial Review Board (FRB) for that municipality to control the municipality’s finances, including:

b. A financial review board shall be authorized to approve, implement and enforce a financial plan for any municipality in which it has been created. A financial review board so created shall consist of five members, one of whom shall be the mayor of the municipality or the mayor’s designee; one of whom shall be appointed by the Governor and shall be a resident of the municipality who is not an elected official or employee of the municipality; one of whom shall be the Commissioner of the Department of Community Affairs or the commissioner’s designee; one of whom shall be the State Treasurer or the Treasurer’s designee; and one of whom shall be appointed by the Governor and shall be in officer of the Executive Branch of State government. The financial review board shall exercise its powers and duties under rules and regulations adopted by the board. A municipality subject to a financial review board shall establish a financial plan, subject to the financial review board’s approval, to address the budgetary, operational, capital and economic development needs of the municipality. The financial review board shall also have the power to approve: the annual budget of the municipality, the issuance of debt, all contracts entered into during the time of supervision of the financial review board, and municipal expenditures, if so directed by the board, to the extent that the financial review board shall specify. The financial review board may delegate to the municipality such of its powers, under such circumstances and subject to such conditions, as it may determine. A financial review board shall operate until such time that the board finds that the conditions that led to the creation of the financial review board have been substantially abated.

c. At the end of each year of its operation the financial review board shall report to the board on its activities. The report shall include: a review of the financial review board’s activities generally; the status of the municipalities’ finances; recommendations concerning the municipality’s fiscal condition; the criteria for municipal performance which will lead the financial review board to recommend to the board that the financial review be dissolved; a review of the municipality’s economic development needs; and policy recommendations that would achieve those goals; comment on the municipality’s compliance with the financial review board’s directives; and any other information the financial review board deems necessary. After review, a copy of the financial review board’s report and any comments of the board shall be forwarded to the Governor, the Senate President,

the Senate Minority Leader, the Speaker of the General Assembly, and the Assembly Minority Leader.

d. The board shall review the status of each municipality in which a financial review board has been created at least each two years, at which time the municipality shall be given the opportunity to demonstrate why the financial review board should be ended or its role modified. The board shall determine whether the municipality shall continue to be subject to the oversight of the financial review board and if the conditions that led to the creation of the financial review board have been substantially abated, and shall take such other actions as the board deems appropriate in light of the municipality's financial condition. [Emphasis supplied.]

N.J.A.C. 5:30-13.2 is the regulation that empowers an FRB to “have the power and responsibility to”:

1. Approve, implement and enforce a financial plan of the municipality, including monitoring compliance;
2. Approve the annual budget of the municipality;
3. Approve the issuance of debt by the municipality;
4. Approve labor and other contracts entered into by the municipality;
5. Obtain information regarding the financial condition and needs of the municipality, including such financial statements and projections, budgetary data, and information and management reports and materials as the board may deem necessary or desirable;
6. Inspect, copy and audit such book and records of the municipality as the board shall deem necessary or desirable;
7. Require the appearance of any municipal officer or employee before the board to answer questions concerning the finances of the municipality;
8. Adopt policies and procedures for the conduct of the boards activities; and
9. Provide the Local Finance Board, the Governor and the Legislature with an evaluation of the municipality’s financial condition, and recommendations for legislative action that, in the opinion of the board, are necessary to assure economic redevelopment that will lead to the fiscal recovery of the municipality. [Emphasis supplied.]

Thus, the purpose of a Local Finance Board and a municipality's receipt of Special Municipal Aid under the Act is to prevent the municipality from falling from ordinary "fiscal distress" to "severe financial distress," such that the DCA must assume complete control of the municipality pursuant to the Municipal Stabilization and Recovery Act (MSRA), N.J.S.A. 52:27BBBB-1 et. seq., and to prevent the municipality from filing for bankruptcy under the federal Bankruptcy Code. Notably, should a distressed municipality migrate to "severe financial distress," N.J.S.A. 52:27BBBB-5 allows for the DCA to cancel labor agreements and even reject interest arbitration awards.⁷

Pursuant to the DCA/City MOU, the mission statement of the transitional aid program states:

The Division allocates its limited discretionary funds to ameliorate structural municipal budget shortfalls, ensuring that recipient municipalities can adopt a balanced budget during periods of distress. In addition to providing supplemental state aid to municipalities with documented need, the Division establishes a partnership with each recipient municipality to achieve fiscal stability through operational reform, adoption of best practices, and sound financial planning.

To this end, each recipient municipality shall be assigned Technical Advisors who will work in collaboration with each Transitional Aid Municipality to identify cost drivers, implement operational and budgetary reforms, and identify and attract revenue generation and development opportunities. through this intervention, the Division will assist each municipality in achieving lasting structural reform sufficient to conclude the municipality's reliance on transitional aid.

In the second whereas clause of the recitals, the DCA Director's fiscal oversight authority over the City includes, but is not limited to, "the implementation of government, administrative, and operational efficiencies, the approval by the Director of personnel actions, professional services and related contracts, payments in lieu of tax agreements, acceptance of grants from state, federal or other organizations, and the creation of new or expanded public services..." Ms. Long,

⁷ The State's takeover of Atlantic City in 2016 (and continuing) is one such example whereby labor contracts were cancelled or unilaterally modified.

Mr. Silva and the chief of staff meet weekly with a fiscal monitor appointed by the DCA. Each meeting typically lasts two hours. The City must provide up-to-date accounting information, revenues, expenditures, the municipal tax levy, personnel changes, the status of any ongoing contract negotiations, etc.

Under the terms of the transitional aid program, the DCA may withhold funds to the City if it is deemed to be out of substantial compliance with its directives and guidelines. Examples of noncompliance include hiring personnel without appropriate approvals, failing to attend meetings or producing documents as directed by the DCA, etc. In fact, a simple review of the table of contents notes restrictions on about all aspects of personnel transactions, including the hiring and assignment of individuals in acting capacities; terminations and suspensions without pay; longevity pay, overtime, salary increases, promotions and transfers, and has a section on individual and collective negotiations agreements.

As CFO Silva testified, the City must submit personnel changes, such as the need to replace a mechanic or retiring fire chief. The DCA does not always approve the need to replace an employee, especially where consolidation of the work performed with the work of a higher title is possible. Nor does the DCA always approve the salary requested even if it approves the request for replacement. For example, the DCA denied the City's requested salary to replace a mechanic and the City was tasked with evaluating comparable salaries for mechanics in other jurisdictions before a revised salary was approved. Likewise, on August 2, 2023, the DCA approved the replacement of retiring Fire Chief Brian McDermott, who last earned \$263,556.68 with a new chief at a salary of \$225,000.00 (Ex. C3). Although the DCA had approved McDermott's salary upon his promotion to fire chief, it decided in 2023 to downwardly adjust the salary after the City

examined fire chief salaries in other jurisdictions. Currently, the City, with the guidance of the DCA, is negotiating the chief's salary with an eye toward avoiding too great a degree of salary compression.

Under Section H1 of the MOU, the DCA directed the City to immediately freeze supplemental pay provided to elected officials and noncontractual employees, e.g., longevity pay. Section H3 salary restraints for elected officials and noncontractual employees, limits annual increases of no greater than 2% under the PERC cost out system. For the City to exceed 2% annual salary increases, according to Ms. Long, the DCA requires a corresponding offset in other areas of the operating budget. Section H4 requires the City not to offer overtime for any employee unless that individual is entitled to overtime pursuant to the Fair Labor Standards Act.

Under Section R, individual or collective negotiations agreements, paragraph 1, limitations on annual increases, the DCA cautions that transitional aid will not be provided if the City allows or approves compensation increases that are not sustainable. The specific 2% annual increase, on average, is the permissible ceiling to be eligible for future aid. Under Section R1a, the DCA requires the City to perform the same cost outs in the last year of the expired agreement that the 2% "hard cap" statute required before it was not renewed. In turn, this exercise yields a base from which negotiated increases can be costed out as required by the DCA.

Also, prior to 2018, the City was able to sell bonds to fund non-capital expenses such as terminal leave payouts (note: the DCA permitted the City to use surplus to fund terminal leave payouts). However, the Local Finance Board recently informed the City that they could not use bonding for operating expenses such as funding terminal leave buyouts. Rather, bonding would be limited to capital expenditures only. Instead, pursuant to the 2022 Addendum to the MOU, the

use of the fund balance (or “surplus”) is limited to establishing and/or funding reserves for accumulated absences (terminal leave payouts), storm reserves, tax appeals, insurance claims and is otherwise to be used to achieve long-term fiscal stability and retention of a fund balance. Mr. Silva testified that the average terminal leave payout for PFOA members is over \$100,000. The City is only permitted to use surplus as revenue in an amount equal to what can be regenerated in the subsequent year, or it may use surplus generated from an asset sale of capital improvements. Surplus in 2022 was 3.5 million dollars. In 2023, surplus is one million dollars.

Under paragraph 11, the calendar year 2022 tax levy shall be no less than 2% higher than the calendar year 2021 municipal tax levy to remain eligible for transitional aid. This was not followed for the calendar year 2023 budget. For the 2% levy cap, the amount derived through taxation was \$163,324,735 in 2022. Applying the 2%, the maximum allowable amount to be raised by taxation in 2023 was \$168,661,461. The City states \$167,408,305 in 2023 as the amount of the budget it will raise through taxation. This left a cap bank of \$1,253,155.53 for use in calendar years 2024-2026.

Finally, as part of its fiscal oversight, the DCA explores revenue development with the City. The City has explored the potential for revenue development, and it has considered developers, cannabis, PILOTs (payments in lieu of taxes), and federal tax abatements (to attract new business by providing tax incentives with the hope of receiving increased revenue subsequently).

Construing the Interest Arbitration and Special Municipal Aid Laws In Harmony

To borrow the phrase of the City's Attorney, "This matter requires harmony between the law applicable to a municipality in substantial fiscal distress requiring aid from the State and the laws applicable to interest arbitration."

This matter appears to be a case of first impression as it involves the interplay of two bodies of legislation that must be considered, respected, and given their legal due. On the one hand, there is the body of legislation concerning interest arbitration as a fast and expeditious resolution where a municipality and public sector union cannot reach an agreement concerning the terms and conditions of a new collective negotiations agreement. On the other hand, there is a body of legislation that hamstringing a municipality that is receiving aid from the State of New Jersey from engaging in haphazard spending. Notwithstanding these two bodies of law, one certainty is that the ultimate outcome of an interest arbitration cannot result in the municipality in financial distress (here, Paterson) from slipping into a State municipal receivership and municipal bankruptcy (City brief, page 20).

I cannot see any reasonable opposition to the soundness of the above statement.

Indeed, the role of the DCA in connection with the instant interest arbitration proceeding presents a unique twist. Pursuant to N.J.S.A. 34:13A-16, the New Jersey legislature in 1979 bestowed upon interest arbitrators the exclusive jurisdiction to hear and decide police and fire negotiations impasses. However, in the context of both negotiations and interest arbitration, a non-party could have a bearing on the funding of an award. In this matter, the DCA is a non-party to this Interest Arbitration proceeding.

As discussed previously, the DCA has substantial fiscal control over the City's day-to-day financial operations and decision-making. It has provided transitional aid in the range of 18-25 million dollars out of a 300+ million-dollar budget or 5-8% of the budget. It has been with the City for over 15 years and has approved both the existing labor contracts with the three fire superior

officers' units, as well as the more recent settlement of City contracts, except for police and fire. The DCA has the laudable goal of helping the City to erase its structural budget deficit and become more self-sufficient. To that extent, the DCA and the City signed the Memorandum of Understanding. Obviously, an interest arbitrator must be sensitive to the statutory oversight delegated to the DCA under the Special Municipal Aid Law to help a fiscally distressed municipality such as the City of Paterson.

However, the DCA does not have the statutory authorization to nullify an interest arbitration award under the Special Municipal Aid Act. So, the question becomes does there exist conflict between the legislative schemes as applied to this dispute; if so, to what extent; and if so, can the conflict be resolved so that the legislative intent underlying each statutory enactment is harmonized to the extent possible?

Initially, notwithstanding the Special Municipal Aid Law, the legislature designated interest arbitrators to determine police and fire impasses, and it designated the DCA to help keep distressed municipalities afloat. Construing the legislative interests at stake for lack of a better phrase, the DCA resides in the public interest/financial criteria of the interest arbitration statute. The DCA's efforts shaped the overall financial picture which the City presents to the undersigned arbitrator in this proceeding. Since the arbitrator cannot direct the DCA to fund an award, the arbitrator's focus must be to apply the financial/public interest criteria to the parties' competing salary proposals just as he would in any other interest arbitration proceeding where dedicated state aid is provided. Thus, while the DCA helps shape the financial picture presented by the City to the arbitrator, the arbitrator is charged with applying all the 16g criteria to resolve the parties' impasse. To that extent, there may be no conflict.

However, where some friction between the two laws may have to be reconciled, it involves the DCA's restrictions on the City's use of non-TA funding sources which could be used to fund salary increases (or at least bridge the difference between the City's offer and an arbitrator's award). The DCA, under the threat of holding the City in "substantial non-compliance" with the MOU, restricts the City from using certain funds otherwise available to it to settle labor contracts. For example, at the direction of the DCA, the City cannot divert fund balance or surplus to help settle negotiations, it cannot bond to raise funds for the same purpose, and it cannot increase salaries beyond the 2% maximum. Yet, none of these restrictions bind an interest arbitrator from pointing to the same funding sources to help bridge a gap between a salary award and the City's final salary offer. Nor is an interest arbitrator bound by the 2% cap set forth in the DCA/City MOU.

Additionally, I do not see how the DCA would declare the City to be out of compliance with the MOU if an interest arbitrator declares that such funds are available and should be deployed, at least in part, to bridge the gap between a salary award and the City's final salary offer. Thus, while the results of an interest arbitration may require the City to partially use otherwise available funds or incur some debt beyond that which the DCA would prefer, and/or to make reasonable operational changes to help fund the award, all this may be necessary and justifiable under the 16g criteria. See, e.g., Irvington PBA v. Town of Irvington, 80 N.J. 271, 296 (1979).

To harmonize the two laws, the DCA's restrictions on the City's use of available non-TA funds may have to be relaxed. Certainly, the two laws cannot be harmonized if the DCA not only provides aid which is off limits to fund salary increases which it does not approve but has the power to restrict otherwise available sources of non-TA funding (or revenue raising) from the

interest arbitration process as well. Unquestionably, such a result would dilute the interest arbitration laws. In fact, it would all but collapse the legislative distinction between the DCA acting under the Municipal Stabilization and Recovery Act, N.J.S.A. 52:27BBBB-1 et. seq., where an interest arbitration award can be set aside, and the DCA acting under the Special Municipal Aid Act, N.J.S.A. 52:27D-118.24 et. seq., where an interest arbitration award cannot be interfered with by the DCA. Obviously, the legislature did not intend for both forms of governmental oversight to yield, in effect, the same result vis-à-vis the interest arbitration laws. Thus, for these reasons, I find and conclude that while I have no authority to direct the DCA to fund any difference between the undersigned's Award and the City's Final Offer, I am not bound from citing traditional sources of non-TA funding or revenue raising to help bridge the gap in support of an award. Nor am I bound by the 2% cap. Rather, a salary award must adhere to a fair application of the 16g factors with, in this case, special emphasis placed on the public interest/financial criteria.

Cost outs of Salary Proposals and 2% Pattern

The Guides

The City had proposed (as a first preference) a guide which it believed provided an equitable continuation of the PFA guide in exchange for the elimination of terminal leave and longevity for new promotions with no retroactive pay. The City withdrew the guide after declaring the PFOA's proposed guide exorbitant. The PFOA's counter guides are as follows:

Deputy Chief Final

PROPOSED CONTRACT								Current	Annual Diff
Year	Salary	% Inc	Night Diff	Certs	Holiday	Total Salary	Number		
Start of Year 15 or Pro	190,216.25	0%	5,706.49	3,804.32	4,180.58	203,907.64		-	
Year 16	193,069.49	1.50%	5,792.08	3,861.39	4,243.29	206,966.25		-	
Year 17	195,965.54	1.50%	5,878.97	3,919.31	4,306.93	210,070.75		-	
Year 18	198,905.02	1.50%	5,967.15	3,978.10	4,371.54	213,221.81		-	
Year 19	201,888.59	1.50%	6,056.66	4,037.77	4,437.11	216,420.14		-	
Year 20+	204,916.92	1.50%	6,147.51	4,098.34	4,503.67	219,666.44		-	
TOTAL SALARY IMPLICATIONS OF 25 YEAR CAREER						1,270,253.03	0	-	
	188332.92								

Battalion Chief Final

PROPOSED CONTRACT								Current	Annual Diff
Year	Salary	% Inc	Night Diff	Certs	Holiday	Total Salary	Number		
Start of Year 10 or pro	165,818.91	0%	4,974.57	3,316.38	3,644.37	177,754.23		-	
Year 11	167,477.10	1.00%	5,024.31	3,349.54	3,680.82	179,531.77		-	
Year 12	169,151.87	1.00%	5,074.56	3,383.04	3,717.62	181,327.09	1	181,327.09	
Year 13	170,843.39	1.00%	5,125.30	3,416.87	3,754.80	183,140.36		-	
Year 14	172,551.82	1.00%	5,176.55	3,451.04	3,792.35	184,971.76		-	
Year 15	174,277.34	1.00%	5,228.32	3,485.55	3,830.27	186,821.48	2	373,642.96	
Year 16	178,634.28	2.50%	5,359.03	3,572.69	3,926.03	191,492.02		-	
Year 17	183,100.13	2.50%	5,493.00	3,662.00	4,024.18	196,279.32	3	588,837.95	
Year 18	187,677.64	2.50%	5,630.33	3,753.55	4,124.78	201,186.30		-	
Year 19	192,369.58	2.50%	5,771.09	3,847.39	4,227.90	206,215.96	1	206,215.96	
Year 20+	200,064.36	4.00%	6,001.93	4,001.29	4,397.02	214,464.60	9	1,930,181.38	
TOTAL SALARY IMPLICATIONS OF 25 YEAR CAREER						2,103,184.88	16	3,280,205.33	
	164177.14								

Captain Final

PROPOSED CONTRACT								
Year	Salary	% Inc	Night Diff	Certs	Holiday	Total Salary	Current Number	Annual Diff
Start of Year 5 or pro	125,681.38	0%	3,770.44	2,513.63	2,762.23	134,727.68		-
Year 6	126,938.19	1.00%	3,808.15	2,538.76	2,789.85	136,074.96		-
Year 7	128,207.58	1.00%	3,846.23	2,564.15	2,817.75	137,435.71		-
Year 8	129,489.65	1.00%	3,884.69	2,589.79	2,845.93	138,810.06		-
Year 9	130,784.55	1.00%	3,923.54	2,615.69	2,874.39	140,198.17		-
Year 10	132,092.39	1.00%	3,962.77	2,641.85	2,903.13	141,600.14	10	1,416,001.41
Year 11	134,734.24	2.00%	4,042.03	2,694.68	2,961.19	144,432.15	13	1,877,617.90
Year 12	137,428.93	2.00%	4,122.87	2,748.58	3,020.42	147,320.79		-
Year 13	140,177.50	2.00%	4,205.33	2,803.55	3,080.82	150,267.20	8	1,202,137.64
Year 14	142,981.05	2.00%	4,289.43	2,859.62	3,142.44	153,272.55		-
Year 15	145,840.68	2.00%	4,375.22	2,916.81	3,205.29	156,338.00	1	156,338.00
Year 16	148,757.49	2.00%	4,462.72	2,975.15	3,269.40	159,464.76		-
Year 17	151,732.64	2.00%	4,551.98	3,034.65	3,334.78	162,654.05		-
Year 18	154,767.29	2.00%	4,643.02	3,095.35	3,401.48	165,907.14	16	2,654,514.21
Year 19	157,862.64	2.00%	4,735.88	3,157.25	3,469.51	169,225.28	5	846,126.40
Year 20+	164,177.14	4.00%	4,925.31	3,283.54	3,608.29	175,994.29	16	2,815,908.58
TOTAL SALARY IMPLICATIONS OF 25 YEAR CAREER						2,413,722.92	69	10,968,644.14
	124437.01							
	125681.3801							

The PFOA maintains that its numbers are more accurate because they originate from actual payroll records maintained by a deputy chief as part of his responsibilities. This would leave intact a base of \$14,543,032. The guides reflect a blended salary/longevity, night differential (4%), certification compensation (1%), and EMS Stipend (3%). Longevity for current members ranges from 2% at five years of service to 20% at 24 years of service. The PFOA calculates the cost of the guides applicable to current members at \$16,340,307.83 (waiving retro except for 2023). Compared to the PFOA's stated base year total of \$14,543,032, the guide increases the cost of the unit by \$1,797,275.⁸ The PFOA did not include a calculation of retro pay for 2023.

⁸ A corollary chart for each rank was presented by the PFOA for those officers hired after July 1, 2018. The formula, including the blending of salary/longevity remains the same. The difference is that the new officers' salary guide reflects a 5% decrease in base salary. For example, upon promotion, a battalion chief has a base salary of \$165,820. A battalion chief promoted after July 1, 2018, upon promotion, receives a base salary of \$154,499 (a 5% differential). No one in the unit currently would be placed on the PFOA alternative guide.

Percentage Increases

There is an issue over the accurate base year cost of the unit. Originally, the City calculated the base year at \$14,079,087.37 (Ex. C2). Subsequently, on November 22, 2023, the City submitted a revised cost out of the PFOA's 3% proposal to include an end date of December 31, 2023 and a carryover end date of July 31, 2024. The base year again lists all current fire superior officers (Ex. C21A). The undersigned then requested the City to submit a final cost out of its own compensation proposal, i.e., 0-0-0-2-2. It did so on December 6, 2023 (after the filing of briefs).

The pre-8/1/19 base year includes all current unit members. However, the number of firefighters coming into the unit changed based on retirements and promotions up to and including a May 2, 2022 promotion and a September 1, 2022 retirement. The PFOA introduced an excel sheet of 49 officers who retired or who otherwise were separated from employment during the contract term (which coincides with the gaps left in the rows of the City's excel sheet). The undersigned's calculation of the cost of the unit with a full complement of 96 officers as of August 1, 2019 is \$13,868,112.37. However, since the actual manpower numbers and corresponding costs of the unit are now known, in my opinion, the most accurate measurement of the consideration of the parties' positions and the undersigned's salary award is the actual costs. Based on the excel sheets, the net costs of the City's 0-0-0-2-2 proposal, PFOA's 3-3-3-3-3 proposal, and the 2-2-2-2-2 alleged pattern are as follows:

	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024	Retro	Total
Base	\$10,327,228	\$11,926,643	\$13,614,416	\$13,873,186	\$13,873,186	N/A	\$13,873,186
PFOA	\$10,637,045	\$12,603,554	\$14,720,067	\$15,421,859	\$15,883,377	\$4,542,194	\$20,425,571 ⁹
2%	\$10,533,773	\$12,375,852	\$14,344,896	\$14,890,565	\$15,188,376	\$2,628,370	\$17,817,106 ¹⁰
City	\$10,327,228	\$11,926,643	\$13,614,416	\$14,145,475	\$14,428,384	\$370,741	\$15,095,941 ¹¹

Application of the Statutory Criteria/Salary Award

I have been vested with “Conventional Authority” to decide the parties’ dispute. See, N.J.S.A. 34:13A-16d(2). Under conventional arbitration, an arbitrator’s award is in no way limited by either party’s last offer. The arbitrator has the power to select from either party’s last offer *or, alternatively, the arbitrator may use his or her judgement and grant an award that he or she feels is more reasonable than any offers made by the parties*. See e.g., Hudson County Prosecutor and PBA Local 232, P.E.R.C. NO. 98-88, 24 NJPER ¶29043 1997) (Arbitrator did not err by establishing third year salary for county prosecutor investigators which was lower than the employer’s offer)[emphasis supplied]. The arbitrator ordinarily takes the record as he finds it and is not responsible for gaps in the record. County of Middlesex, P.E.R.C. No. 97-63, 22 NJPER 17 (¶28016 1996), aff’d, 23 NJPER 595, 598 (¶ 28293 1997). In Town Of Kearny, Appellant, and

⁹ Attached as Appendix A - taken from the City’s cost out which was emailed to me on November 22, 2023, as modified by the undersigned to total the yearly columns. The cost out for retro pay totals \$4,542,194.11 which encompasses FY 2023 (ending July 31, 2023) and FY 2024 (ending December 31, 2023). The City did not prepare a chart to calculate total retro for FY 24 ending July 31, 2024.

¹⁰ Attached as Appendix B - taken from the City’s revised cost out which was emailed to me on December 9, 2023, as modified by the undersigned to total the yearly columns. The City states \$2,628,730.34 retro pay which encompasses FY 2023 (ending July 31, 2023) and FY 2024 (ending December 31, 2023). Attached as Appendix B1, the City’s chart also calculates total retro for FY 24 ending July 31, 2024 at \$2,958,796.33.

¹¹ Attached as Appendix C - taken from the City’s revised cost out which was emailed to me on December 9, 2023, as modified by the undersigned to total the yearly columns. The City states \$370,000 retro pay which encompasses FY 2023 (ending July 31, 2023) and FY 2024 (ending, however, December 31, 2023, the end date of the stipulated contract term). Attached as Appendix C1 the City’s chart also calculates total retro for FY 24 ending July 31, 2024 at \$538,330.64.

Kearny Firemen's Mutual Benevolent Association, Local No. 18, 36 NJPER ¶ 160, the Commission reasoned: “Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties’ proposals involves judgment and discretion, and an arbitrator will rarely be able to demonstrate that an award is the only correct one. See, Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶ 29214 1998).” Lastly, an award may be reasonable even though the employer will need to make operational or cost-cutting adjustments to implement it. See, Irvington PBA v. Town of Irvington, 80 N.J. 271, 296 (1979).

To recognize commonality and avoid redundancy, I will first address as a group the interest and welfare of the public and financial impact criteria (N.J.S.A. 13A:34-16g 1, 5, 6 and 9).

1. The interest 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.).
5. The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c.68 (C.40A:4-45.1 et seq.).
6. The financial impact on the governing unit, its residents and taxpayers.
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).

N.J.S.A. 34:13A-16(g) 1, 5, 6 and 9 require consideration of the employer's lawful authority and the financial impact of an economic award on taxpayers (considering the appropriations and levy caps) and the impact of an award on other programs or services maintained within the same operating budget. As Arbitrator James Mastriani recognized in Point Pleasant and IAFF Local 106, IA-2012-001 (September 19, 2011): “The interest and welfare of the public is

entitled to the most weight because it is a criterion that embraces many other factors and recognizes their interrelationships, including the financial impact of an award on the governing body and taxpayers.”

The New Jersey Supreme Court emphasized that “the public is a silent party” to the interest arbitration process, and that “an award runs the risk of being found deficient if it does not expressly consider” the public interest. Hillsdale, 137 N.J. at 82-83. In the Appellate Division’s decision in Hillsdale, the Court found that the public interest factor “focuses in part on the priority to be given to the wages and monetary benefits of public employees within a municipality’s budget and plans.” Hillsdale, 263 N.J. Super. at 188. “It is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award. That would also conflict with other enumerated factors and render them hollow.” Id. This criterion should be interpreted differently, holding that it “focuses in part on the priority to be given to wages and monetary benefits of public employees within a public employer’s budget and plans.” Hillsdale, 263 N.J. Super. At 188. In other words, an interest arbitrator is required to balance the expense borne by the taxpaying public with the need to ensure that the necessary services are provided; see, also, Sayreville and IAFF Local 98, IA 2006-047 (November 5, 2008) (“Arbitrators have reviewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale.”)

In applying the above criteria, I observe, the City is the only municipality in New Jersey that is both a city of the first class (based on a population of greater than 100,000 residents) and a recipient of transitional aid. Kathy Long, Business Administrator, and Javier Silva, CFO,

discussed City finances and the restrictions placed on it by the DCA. The City has been a transitional aid recipient for over 15 years. Transitional aid is necessary because the City has a “structural” shortfall in its ability to match revenues with expenditures, i.e., to balance the budget. The goal of the transitional aid program is to assist a municipality until it can stand on its own two feet, for lack of a better expression. The receipt of transitional aid is conditioned upon the City making vast improvements in its fiscal management and the cost of services it provides to the public. The DCA set a goal of reducing transitional aid to the City by 15% each year while providing it with an intense, never-ending tutorial on a weekly basis.

Ms. Long and Mr. Silva spoke about the City’s poor fiscal condition. As synopsized in the City’s brief:

First, Covid impacted the progress of the negotiations. Additionally, COVID created a revenue shortfall from the municipal court because for a period it was required to be closed, and many sessions had to be cancelled. The City was prohibited by the State from making people appear in municipal court. COVID-19 impacted the City’s collection of its property taxes because for a period of time, people were prohibited from working unless they were essential employees, and also day care facilities and schools were closed, so parents were required to remain home with their younger children. The issue with the decrease in property tax collections got to the point that the City had to plan for layoffs of staff, and this was a real concern. This is because the City is primarily dependent on the revenue it receives from property tax payments in order to operate.

Significantly, DCA considered that the City had an approximate \$18.5 million gap in its budget for 2023 due to the three cost-drivers: an increase in the cost to the State for employee health insurance benefits, an increase cost to the State for the City’s share of employee’s pension contributions, and a state-wide increase in solid waste costs. Regarding solid waste, the State calculated a new bill for solid waste costs, and it was significantly higher. Regarding employee health-care costs, the City participates in the State’s Health Care Plan, and the costs went up from \$9 million to \$11 million. The City studied if it would be more cost effective to self-insurance or to use a private health insurance plan, and the issue was reviewed by Fairview Insurance Associates, Imac Insurance and Brown & Brown, who are all insurance consultants, and they concluded that for every \$1 the City paid to the State for employee health insurance benefits, the City received \$1.9 in return. That

is to say, they all concluded that it was not in the City's best interest to leave the State Health Care Plan. If the City had self-insured, the cost would have been \$30 million extra, rather than \$2 million. This is because the private cost is outpacing its affordability. *Long testimony, pg. 30-37.*

2023 is the first year in the past three or four years where the City unexpectedly needed extra money from the State for its budget. The City was aware of these issues in 2022, and that there might be a gap in the City's budget for 2023. The City then endeavored to close the gap with the assistance of DCA's fiscal oversight, and DCA recognized that the costs were unanticipated, beyond the City's control, and that City was trying to address the matter as best it could, so DCA gave the City an additional ten million dollars in aid. However, there was still an \$8 million deficit remaining. Furthermore, the City does not have money in reserves to pay retro for a five-year period. The City has \$275,000 in reserves for retro. *Silva testimony page 23.* The DCA also considered that because this matter had to be litigated with the Union, there would be legal fees incurred to resolve the matter. The City came up with \$3.6 million, and this averted the potential for layoffs again. This was done by not filling vacant positions. That is to say, the City had to shrink its workforce. Due to the situation, the City cut everything down to the bone, and this is because the City cannot just find millions of extra dollars each year. Moreover, the DCA is well aware that the City does not have reserves for retro payments. After considering the big picture for the contract period at issue, DCA formulated its position in this matter.

In contrast to the expert status of CFO Silva as a witness, the PFOA did not have an expert witness or an audit of the 2023 budget. Thus, subject to other evidence to the contrary, the expert testimony of CFO Silva is credited with respect to establishing the financial condition of the City.

On November 1, 2023, the governing body adopted the CY 2023-2024 budget. The budget was approved by the DCA as well. The total budget was \$309,972,529.¹² As Ms. Long testified, approximately 75% of the total budget is made up of salary and wages. Of the remaining 25%, 15% of it is not discretionary spending. The overall tax rate was established at 4.902 per \$100,000 assessed value. (The local purpose tax is 2.7559; library tax, 0.056; County, 0.935; and local

¹² The overall anticipated budget in 2022 was \$318,419,917 or approximately \$8,447,383 more than the anticipated 2023 budget.

schools, 1.155). The assessed valuation of City of Paterson properties remains mostly constant from \$6,078,150,782 in 2022 to 6,074,629,921 in 2023.

For the 2% levy cap, the amount derived through taxation was \$163,324,735 in 2022. Applying the 2%, the maximum allowable amount to be raised by taxation in 2023 results in \$168,661.461. The City reports an available levy cap bank of \$1,253,156 for use in CY 2024-2026. To the extent that funding part of the difference between the Award and the City's Final Offer can be accomplished through the CY 2024 Budget, i.e., retro pay, I note that the above monies are available in addition to the City's projected 2% salary increase year for CY 2024. The budget also reflects one million dollars of fund balance or surplus. In 2022, the surplus account showed 3.5 million dollars. A one-million-dollar surplus is not enviable in a City of this size. Pursuant to the 2022 DCA MOU, surplus can be used for, among other things, the funding of terminal leave payments. The City certainly can do that which would free up other revenue sources to address compensation or it could choose not to fund terminal leave payouts with surplus. Instead, for the purpose of this proceeding, the City can use surplus to bridge the \$80,000 difference in retro pay between the City's cost-out of its proposal (\$370,000) and the undersigned's \$450,000 award of retro pay (2022-2023 \$300,000 and 2023 to December 31, 2023 \$150,000).

With respect to the transitional aid provided by the DCA in 2022, the amount was \$17,810,000. Originally, the DCA – as part of a weaning off program – had planned on allocating \$15,000,000 for 2023. However, the DCA ended up awarding \$25,000,000 to the City due to more than anticipated, or beyond the City's control, increases in solid waste and disposal fees, health benefit costs and pension costs. As stated previously, the undersigned has no authority to direct the DCA to fund the difference between the City's Final Offer and the salary award herein.

In terms of revenues experiencing a significant increase in 2023 from 2022, licenses and fees were one such area. Another area of significant gain was in the interest on investments and deposits which went from \$333,111 realized in 2022 to \$1,500,000 anticipated for 2023. This record contains no evidence explaining the dramatic increase in revenue on this line item. Additionally, for 2022, ambulance fees were anticipated at \$3.07 million dollars. However, \$3.45 million dollars was realized in the 2022 budget. The City anticipates raising \$3.4 million dollars in 2023. While the City could increase fees/taxes for use of the ambulances and EMT services, it has not done so as of recently. Similarly, the City realized in 2022 significantly more than it anticipated with respect to the interest and costs on delinquent taxes (\$1,530,000 to \$1,969,276). The City anticipates \$1,900,000 in such revenue for 2023.

Pursuant to the CARES ACT, the City received \$4,000,000 in 2022 for premium pay for essential workers. Also, American Rescue Plan monies have been used to offset the shortfall in municipal court revenues brought about by the partial cessation of operations during COVID-19. The City normally receives \$5 million in revenue from fines. However, COVID-19 reduced that amount down to a low of \$2.5 million, and post COVID-19, it has only risen to \$3 million, so the City is still short \$2 million from its municipal court because of the pandemic.

CFO Silva testified that American Rescue Plan funds cannot be used to fund salary increases. Similarly, the City also receives grants for violent crime, i.e., 35 million dollars in federal aid which cannot be used to fund salaries.

The subject of bonding came up in this proceeding. In 2023, the City anticipates paying \$7,155,800 in bond principal or \$115,440 more than it did in 2022 (\$7,040,360). Interest on bonds for 2023 is stated as \$2,700,704 or \$348,549 less than 2022 (\$3,049,263). Since 2018, the Local

Finance Board has restricted the City from bonding to fund aspects of employee compensation, such as terminal leave payouts. According to the 2022 DCA MOU with the City, bonding would be limited to capital expenditures only. Notably, that limitation had more significance in 2022 when the City appropriated \$36,719,096 for capital improvements. In contrast, for 2023, the City appropriated only \$8,355,000 for capital improvements. Nonetheless, due to the restrictions, the City has been paying more on principal and less on interest, which is a positive sign, i.e., reducing debt service.

Also, the most recent new line item for revenues is the sale of cannabis by three or four dispensaries which brought in over \$600,000 more than anticipated in 2022. For the CY 2023 Budget, the City anticipates receiving \$2,000,000 in cannabis revenue. Ms. Long and Mr. Silva readily acknowledged that an increase in marijuana licenses in Paterson would generate more income. However, on the political front, there is significant pushback from residents who do not want marijuana dispensaries in their neighborhood and/or being pushed on the population.¹³

Finally, the PFOA introduced a list of officers who retired during the open period of the contracts. Undoubtedly, there were savings realized by the City by not filling vacancies from 2019 to 2021 (as evident from the City's Excel worksheet) and then by promoting new captains into the unit at the lower steps of the existing salary guide. Having said this, however, any such savings have been used to balance the budget and/or are part of the reserves the City is relying on to meet its proposed retroactive obligations for 2022-2023 and part of 2023-2024.

With respect to the "spending CAP" (adding COLA), the City was allowed a maximum appropriation in the amount of \$234,263,290.40 to be within the 3.5% appropriations cap. The

¹³ By comparison, Jersey City has distributed approximately 40 marijuana licenses.

City states \$231,637.690 or \$2,625.600.40 within the cap. Salaries and wages rose from \$112,130,728 to \$115,576,944, or a 3.07% increase over 2022. It is noted that the City stated budget projections with respect to salaries and wages at 2% annually on a compounding basis from 2024 through 2028. With respect to the division of fire, total salaries and wages in 2022 were \$39,500,000. For 2023, that amount is \$41,000,000 or a 3.66% increase. It is presumed that this item includes the net increases in salaries for this unit contemplated by the City as well as the set aside for the funding of retroactive increases, as stated previously.

In sum, the confluence of lost municipal court revenues due to COVID-19, the delay in negotiations until 2022, the structural budgetary shortfall experienced in 2022-2023 by the City, the need for it to request an additional 10 million dollars from the DCA, its moratorium on filling vacant positions (to raise 3.6 million dollars), and the City's diversion of reserves to fund an originally proposed 2% across-the-board offer to the PFOA units contributed to the significant limitations on fashioning an economic award for this group.

In addressing the public interest/financial criteria, even though I would otherwise find that the unit in question deserved, at a minimum, to be treated like the City treated its non-uniformed union and non-represented employees, i.e., 2% across-the-board with retroactive pay, in the current fiscal setting, I cannot award that amount. In fact, the cost of the pattern, 2%, as applied to this unit would amount to \$17,817,106 including \$2,628,370 in retro pay, or approximately 2.8 million dollars over the City's salary offer of \$15,095,941 (including \$370,741 of retro pay). Based on this record, there is at most \$370,000 in reserves in the 2023 Budget (based on the City's cost out of its own proposal) and limited other means of funding an award which make the once available 2% across-the-board proposal unreachable now. And even if the City haphazardly diverted all its

surplus and cap banking in CY 2024 to fund \$2,628,370 in retro pay, it still would come up approximately \$400,000 short. And because the City cannot seriously divert all its cushion in the CY 2024 budget, it would have to fund most of a 2% salary increase by shutting down services and laying off numerous personnel, a result which no reasonable arbitrator could responsibly accept.

Based on the same reasoning, and with even more force, the PFOA's 3% across-the-board proposal, which generates 4.5 million dollars in retro pay, cannot be awarded. The City responded to the costs of the PFOA's alternative 3% across-the-board increase. If awarded, the 3% increases would result in the deputy chiefs receiving pay raises between \$28,000 and \$33,000, and retro payments between \$67,000 and \$77,500. With a 3% increase, six officers would be making \$243,000. Battalion chiefs would receive pay increases from \$24,000 to \$30,000 with some of their pay rising as high as \$214,431.32 (See revised C2, line 85). Retro payments for battalion chiefs would range from \$60,595.59 to \$65,439.45. Pay raises for the 71 captains would be \$20,000 to \$24,000 each, and retro payments for those who have been captains for the entire five-year contract period would be between \$47,662 to \$54,301 each.

As to the cost of the PFOA's proposed salary guides, the guides cost anywhere from 1.5 to 2 million dollars more than the City's offer. In addition, the guides leave PFOA members with dramatically higher salaries heading into 2024 and beyond. For example, Exhibit C5 compares the numbers in the various cost scenarios of 0-0-0-2-2, 0-0-0-3-3, 2-2-2-2-2 and 3-3-3-3-3 to the PFOA's proposed new guides. According to the City's exhibit, a deputy chief with 28 years on the job would earn \$210,702. Under the PFOA's deputy chief guide, a deputy chief would earn \$239,097 with only 20 years on the job. A battalion chief with 19 years on the job currently earns

\$162,613, but under the PFOA's battalion chief guide he/she would earn \$214,464 which is greater than that currently made by a battalion chief with 25 years on the job (\$188,872.55). Captain No. 70 on the guide would earn \$164,784 if given a 3% increase for each of the five years. However, he would earn \$175,994 under the PFOA's captains guide. Thus, for all these reasons, I find, the public interest/financial criterion clearly does not support a compensation award even within the neighborhood or outskirts of the PFOA's alternative salary proposals.

Having said this, the second prong of the public interest criterion has to do with the importance of maintaining the good working morale of public safety officers. During negotiations, the City's prior administration made a representation which was unfortunate to the extent that PFOA negotiators may have been lulled into a sense of security. According to Captain Petrelli, Ms. Long's predecessor represented that the City had budgeted 2% raises for the unit. The PFOA did not accept that offer, but instead viewed it as an immutable minimum above which negotiations could take place. Second, Ms. Long testified that the City preferred to negotiate with the PFA first and then turn to the PFOA. The PFOA did not object to this, believing that the results achieved would be offered to them. However, the PFA and the City signed an MOU in May 2022 providing for well over 2.9% in salary increments, increased holiday pay from 36 to 48 hours, and an increase in night differential from 3% to 4%. All other City unions settled at 2% across-the-board with retro pay (hence, the 2% pattern) and then the floor fell out of the PFOA's negotiations (when reserves for their members' increases were diverted to fill other gaps in the budget).

Considering the foregoing, I find that the morale of this unit has been negatively impacted. Fire captains, battalion chiefs and deputy chiefs perform critical public safety functions by directing fire suppression and EMS activities throughout the City and by running the day-to-day

administrative side of the Paterson Fire Department. They also were on the front lines during COVID-19; indeed, many members ended up in the hospital. Thus, the unfortunate turn of events which undoubtedly adversely impacted the morale of this unit must be accounted for in this proceeding, to the extent possible.

Comparison of the wages, salaries, compensation, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, salaries, compensation, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally. (34:13A-16(g)2)

Internal Comparability

N.J.S.A. 34:13A-16(g)2 requires a comparison of the wages, salaries, compensation, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, salaries, compensation, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally. The regulations specifically require the interest arbitrator to consider the “[P]attern of settlement and benefit changes...” when considering the issue of comparability within the same jurisdiction. N.J.A.C. 19:16- 5.14(c) (5).

The Commission has recognized the importance of maintaining a pattern of settlement among bargaining units of the same employer. In County of Union, IA-2001-46, 28 NJPER 459, 461 (¶33169 2002), the Commission emphasized that “[P]attern is an important labor relations concept that is relied on by both labor and management.” The Commission noted that “[I]nterest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuing and stability of employment by discouraging future settlements and undermining employee morale in other units.” Id.

One case of significance on this criterion is 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). In that case, the County objected to the weight given by an arbitrator to N.J.S.A. 34:13A-16(g)(2)(c) when considering internal law enforcement settlements but its objection was not sustained. PERC has consistently observed that this subsection 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, although a strict pattern of settlement did not exist, the arbitrator gave significant weight to the terms of various internal settlements between the County and its other law enforcement units. The award was appealed and affirmed by PERC. PERC's decision was appealed to the Appellate Division. There, the court rejected the public employer's contention that the arbitrator erred in his application of this factor and the weight the arbitrator accorded to it.

PERC has also been called upon in other cases to decide the significance of internal comparability or a pattern of settlement not only between and among public safety units, but also with non-law enforcement units as well as non-unionized or non-aligned employees. PERC has held that where a settlement pattern is alleged to be present it must be considered. One lead example was in the matter of 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 as well as three law enforcement units. After the County's proposal on health benefits for another law enforcement unit had been denied by the arbitrator, the County appealed the award to PERC. The appeal resulted in a remand of the award back to the arbitrator. PERC stated:

N.J.S.A. 34:13A-16(g)2© 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).

The interest arbitrator then issued an award on remand after which time, Union County filed another appeal. This compelled the issue of settlement pattern to be revisited by PERC. PERC once again found that the arbitrator rejected the County’s proposal on health insurance without properly addressing the criterion of internal comparability. Although PERC expressed no opinion on the merits of the County’s proposal and emphasized that it made no finding on whether a pattern existed or, if so, whether the alleged pattern must be followed, PERC once again ordered a remand of the award for an analysis of the pattern of settlement issue, but this time to a different arbitrator. In doing so, PERC explained:

[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.

Arbitrator Joel Weisblatt faced the issue of disparate treatment in In the Matter of Interest Arbitration between Township of Holmdel and PBA, Local 239, Docket No. IA-93-163 and found that:

The Township presents a compelling argument with respect to the reasonableness of consistency among bargaining units under the public interest criterion. Consistency in treatment among bargaining units of the same employer is unquestionably a generally accepted element of good labor relations policy. Sound and consistent labor relations are certainly in the public interest. It prevents “whipsawing” in negotiations and it reduces the potential for the decline in morale, which often accompanies the perception of disparate treatment. The morale issue is a double-edged sword. Unreasonably favorable treatment of police units could likely cause the morale of the other public employees in the municipality to wane. Such a result would certainly not be in the public interest.

In this matter, the PFA and the City signed an MOU in May 2022 providing for well over 2.9% in salary increments, increased holiday pay from 36 to 48 hours and an increase in night differential from 3% to 4%. Both holiday pay and night differential are folded into the new salary guide each year and, hence, must be viewed as part of the guide. Trade-offs included ending terminal leave for new hires, the folding of longevity for existing members into base salary, and the elimination of it for new hires.

As to all other City unions, the DCA had approved the 2% across-the-board retroactive increases for the following contracts: DPW blue-collar workers (Local 2272), library workers, DPW blue-collar supervisors (Local 3474), DPW white-collar supervisors (Local 3474A), motor pool workers, crossing guards, the health division, legal department, and dispatchers. According to Mr. Silva, the cost of the increases granted to other units in the most recent round of negotiations was approximately 25 million dollars. Currently, the City is negotiating contracts with the police unions. Notably, in the CY 2023 Budget, the City has projected 2% salary and wage increases for CY 2024-2026.

As the PFOA negotiations remained at an impasse throughout 2022, eventually, the City diverted the 2% reserves for each of the first three years of the new PFOA agreement (2019-2020, 2020-2021, and 2021-2022). It also determined that given the circumstances, providing the far

lower paid employees with 2% increases while offering the much higher paid members of the PFOA a 0-0-0-2-2 package still resulted in significant salary increases. Here, the City's reasoning is not entirely unreasonable. Nonetheless, the drain on morale from such a significant break from the pattern is not ameliorated based on the City's explanation.

On the contrary, PFOA members are understandably flustered. PFOA members supervise the PFA's members who received such a favorable compensation package. Existing PFA members did not give up longevity and the unit received 12 hours more of holiday pay than PFOA members currently receive.¹⁴ Also, non-uniformed employees who are not charged with saving lives at the risk of their own safety received 2% across-the-board increases with significant retro pay. Given the importance of adhering to an internal pattern of settlement to the extent possible, I cannot conclude that the City's 0-0-0-2-2 offer to the PFOA squares with this criterion (or, as set forth previously, with the public interest in preserving the morale of public safety personnel). The Award issued must consider the internal pattern of settlement, the reasons why the City deviated from it, and the morale of the unit.

External Comparability

Next, I will address the parties' external comparability arguments. To assist an arbitrator in determining the weight to be accorded to comparability evidence, PERC promulgated guidelines which can be broken down into the following five general categories:

1. Geographic comparability, contiguous jurisdiction or nearby, size of jurisdiction, and nature of employing entity;
2. Socioeconomic considerations, basically a comparison of the type of statistics found in the New Jersey Municipal Data Book and the UCR, such as

¹⁴ Notably, there is a distinct difference between a new hire in the PFA unit giving up longevity and a newly promoted fire captain giving up longevity where they have enjoyed that benefit for years.

population density, cost of living, crime rate, violent crime rate, fire incident and crime rate, etc.;

3. Financial considerations, such as the tax collection rate, state aid, budget surplus, surplus history, ratios of tax revenue to total revenue, etc.;
4. Compensation/benefits provided to employees of the comparison group; and
5. Any other comparability considerations deemed relevant by the arbitrator.

The PFOA’s Evidence/Agreement

The PFOA submits that the Paterson Fire Department is comparable to the paid fire departments in Elizabeth, Newark, North Hudson Regional, Jersey City, Bayonne and Hoboken. In terms of a comparison of base pay, the PFOA sets forth the following charts and it provides reasoning in support of its assertion:

City	Captains Current Base Pay	Amount Higher than PFOA
Bayonne	\$162,222.00	+\$43,402.00
Jersey City	\$151,906.00	+\$33,086.00
Elizabeth	\$144,319.00	+\$25,499.00
NHRFR	\$148,224.00	+\$29,404.47
Newark	\$134,885.54	+\$16,065.54
Hoboken	\$122,000.00 Firefighter/Non Officer	+\$3,180.00
Paterson	\$118,820.00	

City	Battalion Chief Current Base Pay	Amount Higher than PFOA
Bayonne	\$186,554.00	+\$38,424.57
Jersey City	\$165,717.00	+\$17,595.57
Elizabeth	\$169,963.00	+\$21,841.57
NHRFR	\$168,636.00	+\$20,514.57

Newark	\$152,491.90	+\$4,370.47
Paterson	\$148,121.43	

City	Deputy Chief Current Base Pay	Amount Higher than PFOA
Jersey City	\$186,437.00	\$22,837.00
NHRFR	\$190,791.00	+\$27,191.00
Newark	\$165,925.35	+\$2,325.35
Paterson	\$163,600	

1. Elizabeth Fire Officers

Elizabeth Fire Officers' CNA runs from July 1, 2022, through June 30, 2026 (Exhibit P14).

Highlights of the Elizabeth Fire officers CNA include:

- **EXTRA TIME**
 - May possess a maximum of 480 hours of Compensatory Time pursuant to the Fair Labor Standards Act (“FLSA”);
 - Opportunity to “sell back” Compensatory Time up to a maximum of 122 hours per year;
- **HOLIDAYS**
 - holiday compensation in the form of compensatory time off for a total of one hundred and ninety-two (192) hours in a calendar year.
 - may be taken in six (6), ten (10), or fourteen (14) hour increments.
- **LONGEVITY** – up to 12%
- **VACATION** - All vacation selections will be approved based on seniority.
- **ACTING OFFICERS** - paid for such work at the next ranking position base rate of pay after the fire officer has worked in the next ranking position for at least fifteen (15) minutes following the start

of his assigned shift;

- **SICK LEAVE** - An attendance incentive in the amount of five hundred (\$500.00) to any member who does not use Sick Leave for an entire year;
- **WAGES** –
 - 2.25% effective and retroactively applied to July 1, 2022;
 - Captain: \$141,143.00
 - Battalion Chief: \$166,223
 - 2.25% effective July 1, 2023;
 - Captain: \$144,319.00
 - Battalion Chief: \$169,963.00
 - 2.25% effective July 1, 2024;
 - Captain: \$147,566.00
 - Battalion Chief: \$173,788.00
 - 2.75% effective July 1, 2025.
 - Captain: \$151,624.00
 - Battalion Chief: \$178,567.00
- **EXCHANGE OF SHIFTS** - Exchange of shifts may be used in four (4) to twenty-four (24) hour increments.
- **EDUCATION** – Education stipend and tuition reimbursement.
- **EMT INCENTIVE** – (if member of rescue company)
 - Compensated at the rate of one and one-half times their regular hourly rate of pay for each hour of attendance at any training necessary to receive certification or recertification as an EMT, provided such training occurs during what would normally be the employee’s off-duty hours.
 - \$2,200.00 annual stipend.
- **INSTRUCTOR-LEVEL STIPEND** - \$1200
- **STIPENDS** –

- First Responder \$2,000.00
- Tech Rescue \$2,600.00
- Hazmat \$2,600.00

The PFOA asserts that Elizabeth is a city very similar to Paterson in almost every way. Elizabeth fire officers are compensated fairly, in accordance with the skills they possess and services they provide, despite limited City resources and competing budgetary demands. Elizabeth Fire Department also routinely provides mutual aid to surrounding communities. It would be reasonable to award Paterson Fire Officers' salaries on par with those of Elizabeth Fire Officers.

2. Jersey City Fire Officers

Jersey City Fire Officers' CNA is current through December 31, 202 (Ex. P15). The MOU provided the following terms between Jersey City and the Jersey City Fire Officers:

- **Vacation** - All Fire Officers shall receive twelve (12) twenty-four (24) hour tours of vacation annually.
- **Mutual Exchange of Tours of Duty** - Exchange of tours will be for ten (10) hour day tour, fourteen (14) hour night tour, or twenty-four (24) hour periods.
- **Holidays and Compensation Time Off –**
 - All Fire Officers receive eight (8) holidays given as compensatory days off.
 - Of the eight (8) holidays, the Fire Officer may choose to have any or all of six (6) holidays paid at straight time rates, based upon 8.4 hours per holiday, during the month of December, or the Fire Officer may choose to have any or all of the six (6) holidays used as compensatory days as set forth above.
- **Salaries and Longevity –**
 - The salary gap between the top step of one rank and the bottom step of the higher rank shall not be less than 1 % of the top step salary for the lower rank.
 - Every Fire Officer shall have added to their base pay seventy percent (70%) of the cost of six (6) compensatory days

- (72hrs) into their base pay.
- Longevity up to 16%.
- If hired after May 11, 2011, Longevity up to 12%.
- If hired after January 1, 2016, Longevity up to \$4,000.00
- No Longevity if hired after January 1, 2019.
- Captains Top Step Base Pay
 - 2020 - \$145,270.00
 - 2021 - \$147,449.00
 - 2022 - \$149,661.00
 - 2023 - \$151,906.00
 - 2024 - \$154,184.00
- Battalion Chiefs Top Step Base Pay
 - 2020 - \$158,478.00
 - 2021 - \$160,855.00
 - 2022 - \$163,268.00
 - 2023 - \$165,717.00
 - 2024 - \$168,203.00
- Deputy Chiefs Top Step Base Pay
 - 2020 - \$178,293.00
 - 2021 - \$180,967.00
 - 2022 - \$183,682.00
 - 2023 - \$186,437.00
 - 2024 - \$189,234.00
- Stipends – \$2,000.00
 - Captain of Hazmat Engine Co.
 - Captain of Hazmat Ladder Co.
 - Hazmat Coordinator
- **ACTING APPOINTMENTS** - A Fire Officer serving in any acting capacity out-of-title will immediately receive full pay of the rank in which he/she is acting.

The PFOA maintains that Jersey City Fire Officers perform similar duties to Paterson's, except for the EMS function. Jersey City salaries are reasonable, in view of the complex and hazardous nature of the working conditions. Jersey City shares many similarities with Paterson, including demographics, age, building construction, infrastructure, and mutual aid to surrounding communities.

3. Bayonne Fire Officers

Bayonne settled with the Bayonne fire officers on an MOU effective from January 1, 2021, until December 31, 2025 (Ex. P16). The MOU contained the following terms:

- **Vacation –**
 - 48 hours of personal day time will be added to and included in base pay at each step of the salary at the then rate of pay.
 - Captains will have 3 personal days and Battalion Chiefs will have 4 personal days.
 - All terminal leave will be disbursed in three (3) equal payments.

- **Wages –** Increase wages across the board retroactively with backpay as follows:
 - 7/1/21 - 2.00%
 - Captain Base Pay - \$144,155.00
 - Battalion Chief Base Pay - \$165,779.00
 - 7/1/22- 2.25%
 - Captain Base Pay - \$150,639.00
 - Battalion Chief Base Pay - \$173,234.00
 - 7/1/23 - 2.50%
 - Captain Base Pay - \$154,405.00
 - Battalion Chief Base Pay - \$177,565.00
 - 7/1/24 - 2.50%
 - Captain Base Pay - \$158,265.00
 - Battalion Chief Base Pay - \$182,004.00
 - 7/1/25 - 2.50%
 - Captain Base Pay - \$162,222.00
 - Battalion Chief Base Pay - \$186,554.00

Bayonne is not quite as large as Paterson, but nevertheless similar in demographics, fire problems, age, infrastructure, building construction, and population density.

4. North Hudson Regional Fire Officers

North Hudson fire officers settled an agreement with management for the period of July 1, 2019, through June 30, 2023 (Ex. P17). The provisions include:

- **Wage Increases**

- July 1, 2019 - 2.75%
 - Captain Top Step Base Pay: \$136,638.00
 - Battalion Chief Top Step Base Pay: \$153,612.00
 - Deputy Chief Top Step Base Pay: \$175,878.00
- July 1, 2020 - 2.75%
 - Captain Top Step Base Pay: \$140,396.00
 - Battalion Chief Top Step Base Pay: \$157,836.00
 - Deputy Chief Top Step Base Pay: \$180,715.00
- July 1, 2021 - 2.75%
 - Captain Top Step Base Pay: \$144,257.00
 - Battalion Chief Top Step Base Pay: \$162,176.00
 - Deputy Chief Top Step Base Pay: \$185,684.00
- July 1, 2022 - 2.75%
 - Captain Top Step Base Pay: \$148,224.00
 - Battalion Chief Top Step Base Pay: \$168,636.00
 - Deputy Chief Top Step Base Pay: \$190,791.00

North Hudson Regional fire officers operate in a densely populated, urban area, similar in size and age and with similar industrial history to Paterson. Most residents are not wealthy, and the municipalities served by North Hudson FD face the same economic challenges as Paterson. State aid to cities like Union City is key to their continued viability. Likewise, the State of New Jersey has recognized the need and benefit to providing such aid. According to the statistics, Paterson fights more fires than North Hudson and once EMS calls are included, there is no question that PFOA members supervise a busier, more diverse workload.

PFOA Exhibits 12 & 13 contain 2022 statistics from Paterson Fire Department and North Hudson Regional Fire and Rescue (NHRFR). These statistics reveal that each day PFD deploys the following manpower and equipment:

- Eight (8) Fire Engines (Squad is an Engine)
- Three (3) Ladders
- A Rescue Truck
- Seven (7) Ambulances

- Three (3) Battalion Chiefs
- One (1) Deputy Chief

NHRFR deploys the following manpower and equipment each day:

- Ten (10) Fire Engines (Squads are Engines)
- Four (4) Ladders
- A Rescue Truck
- A Safety Officer
- Three (3) Battalion Chiefs
- One (1) Deputy Chief

These departments are each broken into three battalions, which are geographic areas. Under the command of each battalion chief are the fire companies. NHRFR has two more engine companies and one more ladder company than Paterson. Both have a rescue company, and Paterson has seven ambulances to none for NHRFR.

The National Fire Incident Reporting System (NFIRS) statistics for each department reveal the following data:

Statistics	NHRFR	PFOA
100 Fire, other	14	8
111 Building Fire	51	133
113 Cooking Fire	269	104
118 150, 151, 154 Trash or rubbish fires	113	204
130-132 vehicle fires	43	99
300, 311, 320, 321 Assist EMS	153	1108
322, 323, 324, 350, 352 Motor Vehicle Accidents	159	496
353 Elevator Rescues	391	170
412 Gas Leak	426	485
424 Carbon monoxide incident	171	234
440 Electrical Problem	302	64
651 Smoke scare, odor of smoke	252	31
730-745 Alarm activations	3351	3283

Despite being similar in many categories, the above table reveals the PFD responded to 82 more building fires than NHRFR. This reflects that, on average, PFOA members lead firefighting operations in buildings in Paterson every 66 hours throughout the year. In contrast, NHRFR officers can expect to lead firefighting operations in a structure fire approximately once every seven days.

In addition to fighting more fires in their hometown than this group of their peers, PFOA members provided mutual, automatic and other aid to outside municipalities 144 times in 2022. In comparison, NHRFR provided mutual aid only 17 times in 2022. Finally, and most significantly, the PFOA supervised the provision of 34,870 ambulance calls for service. NHRFR does not provide EMS.

By contrast, the PFOA base salaries are significantly lower than NHRFR base salaries. Since 2019, North Hudson fire officers have received annual 2.75% salary increases, plus retroactive pay (Ex. P17). After three years in rank, a captain in NHRFR has a base pay of \$148,224.47, exclusive of longevity or any other enhancements, such as an education incentive. A battalion chief in NHRFR currently has a base pay of \$166,636.70. A deputy chief in NHRFR has a base salary of \$190,791.23. As the table below demonstrates, the PFOA fire officers are compensated substantially less than their peers in North Hudson.

Specifically, a Paterson captain's annual base pay is \$29,404.47 lower than a peer in North Hudson. Likewise, respectively, a Paterson battalion chief and deputy chief's annual base pay is \$18,242.27 and \$27,191.23 less than their counterparts in a comparable agency.

5. Newark Fire Officers

Newark fire officers settled a CNA effective from January 1, 2017, through December 31, 2023 (Ex. P18). The agreement includes the following terms and conditions:

- **Wages –**
 - Captain 2023 – \$134,885.54
 - Battalion Chief 2023 - \$152,491.90
 - Deputy Chief 2023 - \$ 165,925.35
- **Exchange of Shifts (Mutual Swaps)** - Exchanges will be limited to one shift of 10, 14 or 24 hours within each 8-day cycle. A 24-hour shift swap may be covered by two officers working split shifts of 10 and 14 hours.
- **Acting Out of Rank –** If an employee covered by this contract acts in a position above his rank for more than five (5) hours, he shall be paid for the tour of duty that he serves in the higher rank, at the minimum rate of pay of the higher rank, for the tour of duty that he serves in the higher rank.
- **Compensatory Time** - shall receive compensatory time of three (3) twenty-four (24) shifts, consisting of any combination of 14-hour days and 10-hour night split periods per year.
- **Holidays** - Employee of the Department working a forty-two (42)-hour week shall receive pay for one hundred sixty-eight (168) hours of salary.
- **Hazardous Duty Pay** - all members assigned to units that are actively engaged in fire suppression (actually fighting fires), including members of the Arson Squad, plus two (2) union officials assigned to the office on full release, shall receive hazardous duty pay in the amount of \$1,253.00 annually.
- **Haz Mat Stipend –** Members of Rescue 1 and Ladder 1 I shall receive a Haz-Mat stipend of four thousand dollars (\$4,000.00) per year.
- **Tour Commander Stipend** - Deputy Chiefs~ Battalion Chiefs and Haz Mat Chiefs shall receive a tour commander stipend of \$2,000.00 per year.

- **LONGEVITY** – Up to 14% of base pay.
- **Clothing Maintenance Allowance** –
 - \$1,025.00 annually.
 - \$1,250.00 stipend payment annually for those members who serve in the Decon Units and the Arson Squad.
 - \$2,500.00 annually for those members who are certified as divers and serve as divers on the SCUBA Dive Team. Members must serve a minimum of three (3) full calendar months in the unit to be entitled to the stipend.
 - \$1,250.00 annually for those members who are certified to the Urban Search and Rescue (USAR) Unit.

Newark is the largest city in Essex County, and its history, demographics, typical building construction, infrastructure, and socio-economic conditions are comparable to Paterson's. Despite the well-publicized economic challenges the City of Newark experiences, its fire officers settled salary and terms of employment that are well above those of the PFOA members.

6. Hoboken Fire Officers

The Hoboken Firefighters Association MOA is attached as Exhibit P19. The Salary Guide demonstrates that a Hoboken firefighter at the top step earns \$122,000.00, which is higher than the base pay of a captain in the Paterson Fire Department.

Overall, comparison to similar units in comparable municipalities reveals that PFOA members receive lower wages than their peers. In fact, Paterson captains' base salary is lower than the base salary of a non-promoted firefighter in Hoboken. Granted, Hoboken is a wealthier town than Paterson, but the City of Paterson should not be rewarded for their refusal to negotiate contracts with the PFOA for four years, while other comparable municipalities have settled reasonable terms with their fire officers, despite being the recipients of various forms of state aid.

Ultimately, a review and comparison of Paterson to the aforementioned six cities reveals the following: that the Paterson fire officers are among the lowest paid, compared to their peers. Factoring in the amount of calls the PFOA responds to, including the additional workload of leading the EMS division, it is beyond evident that the PFOA is entitled to the 3% raise that they have requested.

The City's Response

The City responds by cautioning against placing undue reliance on the external comparability criterion, referring to Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1993), where the Court stated/explained:

....

Before the arbitrator, the dispute centered on a comparison of the parties' final offers with salaries and non-wage benefits paid to police officers in similar communities. . . .

....

. . . An examination of section 16g reveals that the Legislature did not intend for any one factor would be dispositive. . . .

The terms of section 16g require more than a comparison of police salaries in other communities. Section 16g(2) invites comparison with other jobs in both the public and private sectors. The arbitrator should also consider the relationship between any such increase and increases in comparable areas of private employment. . . .

In the present case, the arbitrator's award did not discuss all section 16g factors. Instead, it unduly emphasized the comparison with police salaries in other communities and inappropriately relied on the Borough's perceived "ability to pay." Although we do not have a transcript of the proceedings, the PBA apparently relied almost exclusively on contracts negotiated between other PBAs and municipalities. Perhaps for this reason the arbitrator, when selecting the last offer of the PBA over that of the Borough, simply recited that "this is the neighborhood

out there.” Missing from the award is the reasoned explanation required by the Act.

In addition to the relative weight to be accorded the external comparability criterion in relation to the other 16g criteria, the arbitrator must make sure that he is truly addressing “apples to apples.” Unquestionably, the Legislature wanted to ensure that those municipalities subjected to the process were compared only to other relevant (similarly situated) municipalities by virtue of N.J.S.A. 34:13A-16.2. This provision required PERC to issue guidelines “for determining comparability of jurisdictions” involved in the interest arbitration process. In that regard, N.J.A.C. 19:16-5.14 sets forth PERC’s guidelines, and contains a multitude of factors that an arbitrator must consider making certain that the state of the municipality is taken into consideration prior to entering a final award. Thus, the Legislature clearly intended that the “[c]omparison of the wages, salaries, hours and conditions of employment” be to “the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c.425 (C:34:13A-16.2).” See N.J.S.A. 34:13A-16g(2).

According to the City, the only true comparators are municipalities receiving transitional aid, which is only a handful (Ex. C21).

Calendar Year 2022 Applicants				
Municipality	County	Application Amount	Documents	Grant Awarded
Atlantic City	Atlantic	\$2,035,824.37	<u>Application</u>	\$2,035.824.37
Camden	Camden	\$18,955,000	<u>Application</u>	\$18,955,000
Manville	Somerset	\$2,000,000	<u>Application</u>	\$600,000
Paterson	Passaic	\$17,809,625	<u>Application</u>	\$17,810,000

Penns Grove	Salem	\$550,000	<u>Application</u>	\$550,000
Salem City	Salem	\$1,658,000	<u>Application</u>	\$1,658,000
Seaside Heights	Ocean	\$730,809	<u>Application</u>	\$730,809

State Fiscal Year 2023 Applicants

State Fiscal Year 2023 Applicants				
Municipality	County	Application Amount	Documents	Grant Awarded
Union City	Hudson	\$32,500,000	<u>Application</u>	22,500,000

In addressing the external/comparability criterion, I observe, the PFOA sets forth the compensation and benefits package of the comparators to suggest that one of its alternative salary proposals should be accepted. In disagreeing with this premise, I note, the most relevant criteria in this matter are the public interest/financial criteria and internal comparability. The internal pattern reflects the City's financial abilities whereas the external comparisons do not. Also, it may be the case that the comparators were always ahead of the instant group based on the greater financial abilities of these jurisdictions in comparison to the City. Further, one key reason why neighboring jurisdictions are compared is to check whether such jurisdictions are attracting firefighters and officers away from the municipality subject to the interest arbitration proceeding. Simply put, there is no evidence that PFOA members are leaving for any of the jurisdictions cited by the PFOA, most of which are in non-contiguous counties. Also, the notion that there is some statewide ranking that must be maintained via an award of like salary increases is one which was squarely rejected by the courts, and which contributed to the Reform Act of 1996, a cornerstone of which was the delineation of detailed criteria to even meet the test of comparability.

In addition, I observe, PFOA comparators do not satisfy criterion #1 Geographic comparability, i.e., they do not include Passaic County paid fire departments or paid fire departments within contiguous Bergen and Morris counties. Essex county is included. Criterion #2, Socioeconomic considerations is mostly satisfied. Criterion #3, financial considerations is not satisfied by the PFOA. The City correctly notes a key distinction in that the City is the only one of the groups receiving transitional aid. Criterion #4, compensation benefits provided to employees of the comparison group have been set forth by the PFOA. While I find that the PFOA has met part of the external comparability criteria, it has not met the most relevant one, i.e., a comparison of the fiscal status and capabilities of the comparison group's public employer and the City. Put simply, if the group subject to the interest arbitration is offered X but wants X+1 based on its comparability study of surrounding jurisdictions, the employer of the group subject to the proceeding must be able to fund X+1 for real weight to be placed on the external comparability criterion. Here, no such showing has been made. Ultimately, the outcome of this matter is much more heavily influenced by an application of the public interest and internal comparability criteria.

Private Sector/Military Comparisons

The City introduced two exhibits pertaining to private sector comparisons and military pay (Ex. C15 and C16). The private sector data is culled from the State of New Jersey Department of Labor Occupational and Wage statistics data base. The data shows that salaries in all but a handful of occupations fall well below the compensation level of the current unit. Only those at the top of the military pay grade (O5 to O10) approach the average salary of the current unit. Given the incomparability of the City's select private sector and military occupations to the role of the uniformed firefighter, it is difficult to accord this data any significant weight. Finally, such information is typically used to argue in support of a downward compensation award. The

compensation award set herein, as constrained by the City’s limited resources, would go no lower based on comparisons to the private sector or military.

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. (34:13A-16(g)3).

Most of the fire officers earn more than \$120,000 annually, some earn \$213,000, six receive \$232,000, and six receive \$243,000. The fire officers are the highest paid employees in the City. The captain, battalion chief and deputy chief contracts each agree to be bound by the longevity provisions in the PFA contract. The firefighter’s contract provides those persons hired prior to 2016 receive percentage-based longevity ranging from 2% of salary for five years of service to 18% for 24 years of service. Post 2016 hires receive a set amount ranging from \$2,000 for eight years of service to \$10,000 for 24 years of service with a cap of \$12,000 for 28 years of service.

The existing base salary step guides do not include longevity, night differential, holiday pay, education stipend or EMT compensation. With that said, the step guide base salaries for fire captains are:

Upon Promotion	98,147
6-12 months	102,281
After first year in rank	110,563
After second year in rank	118,820

According to the guide for battalion fire chiefs, upon promotion, the current salary is \$127,954; from six months to 30 months the current salary is \$137,090; and after 30 months the current salary is \$146,224. The current deputy fire chief salary is set at \$152,017 upon promotion; from six to 30 months the salary is \$157,808; and after 30 months, it is \$163,600.

The group also receives 36 hours of holiday pay, education stipend (\$1,250 for an associate degree; \$2,500 for a bachelor's degree; and \$3,500 for a master's degree), night differential pay (3%), and certification pay (2%) - all of which can add \$10,000 to \$40,000 to base salary depending on rank and length of service.

The health insurance coverage that the City provides to its employees is considered a "Cadillac Plan" because it is very generous. The cost to the City for the plan is approximately \$12,000 per individual, and \$25,000 for families. When the fire officers retire, the City still must contribute to their health insurance coverage, as provided by the State, as well as their pensions.

Finally, most significant, the compensation and benefits package provided to captains, battalion chiefs and deputy chiefs has been sufficient to keep officers from leaving for other jurisdictions.

Stipulations of the Parties (34:13A-16(g)4.

Term- August 1, 2019 through December 31, 2023

Meger of all three units into one PFOA unit.

Cost of Living (34:13A-16(g)7.

Neither side introduced evidence on this point. Obviously, both sides are harmed by the high prices of goods and services and the corresponding devaluation of the dollar.

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 bargaining between the parties in the public service and in private employment (34:13A-16(g)8).

Finally, as discussed previously, no evidence was introduced which would suggest that PFOA members are fleeing the jurisdiction for greener pastures. From all appearances, there

exists a suitable career path and related salary and benefits package for employees to stay with the City from date of hire through retirement.

SALARY AWARD

The following salary award is based on a consideration of all the 16g factors discussed above, with a special focus toward the public interest/financial and internal pattern criteria. The results of this impasse proceeding must account for the past, present, and future. As stated, the past ate away at the reserves once designated for this group. The present leaves scarce resources to fund the retro pay component of an award, and the future starts at midnight, January 1, 2024, or in just two weeks' time. The appropriate salary award is one which, by necessity, provides limited retroactive pay while fairly situating the parties as they head into 2024 and the negotiation of a successor agreement.

After carefully studying this record and the statutory criteria deemed most relevant, I award salary increases of 0% for 2019-2020; 1% for 2020-2021; 2% for 2021-2022; 1.5% for 2022-2023; and 1.5% for 2023-2024 (ending 12/31/23). I further award retro pay in the sum of \$300,000 for the period 8/1/22-7/31/23 and \$150,000 for the period 8/1/23-12/31/23 (for a total of \$450,000) as set forth in Appendix D.¹⁵ Appendix D sets forth the difference in retro pay between the City's cost out and the undersigned's award per officer.

The relative costs of the awarded salary increases can be seen by comparing the awarded increases to the costs of the City's and the PFOA's proposals and with the 2% pattern:

¹⁵ The formula used for allocations of retro pay was based on \$300,000 for 8/1/22 – 7/31/23 and \$150,000 for 8/1/23 – 12/31/23. In each of the two years, each officer's total salary was divided by the column total for the unit and the resulting percentage was multiplied by the total retro award to achieve an equitable distribution. Retirees are not included because from the PFOA's list of retirees only one person retired after August 1, 2022 and that retirement was effective September 1, 2022. However, the parties are free to mutually agree to a different allocation of retro pay within the awarded amount if they desire to do so.

	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024	Retro	Total
Base	\$10,327,228	\$11,926,643	\$13,614,415	\$13,873,186	\$13,873,186	N/A	\$13,873,186
City	\$10,327,228	\$11,926,643	\$13,614,415	\$14,145,475	\$14,428,384	\$370,741	\$14,799,125
PFOA	\$10,637,045	\$12,603,554	14,720,067	\$15,421,859	\$15,883,377	\$4,542,194	\$20,425,571
2%	\$10,533,773	\$12,375,852	\$14,344,896	\$14,890,565	\$15,883,376	\$2,628,370	\$17,817,106
IA	\$10,533,773	\$12,047,306	\$14,009,779	\$14,477,428	\$14,694,590	\$450,000	\$15,144,590

The only costs realized during the stipulated term of the contract are retro payments for 2022-2023 and 2023 to December 31, 2023. The difference between the awarded retro pay of \$450,000 and the City’s \$370,000 cost-out of its own proposal is \$80,000.¹⁶ In terms of sustainability, I note, the \$80,000 difference in retro pay can be funded by the existing one million dollar surplus or fund balance.

The remainder of the cost differential between the undersigned’s Award and the City’s offer will, by necessity, be carried into 2024, where there is a differential of \$266,206. The differential is the byproduct of the percentage increases offered by the City (2%-2%) which, when compounded (4.04%) and prorated from August 1, 2023 through December 31, 2023 amount to a 2.85% offer for four years and five months of service. The undersigned’s award, when compounded (6.13%) and prorated to account for the period August 1, 2023 through December 31, 2023 yields 5.22%. to cover the four years and five months of the contract. A comparison of the resulting step guides shows that the undersigned’s Award results in a net difference vis-à-vis the City’s from lowest to highest on the step guide (captain to deputy chief) of \$2,000-\$3,400 per position while being \$4,000-\$5,000 less than the results of the 2% increases originally reserved for this group.

¹⁶ Although the City claims that it has only \$275,000 in reserves for retro pay, this does not square with the fact that the City costed out its own retro pay proposal at \$370,000.

CAPTAIN 2% INCREASE						
STEP	CURRENT	8/1/2019	8/1/2020	8/1/2021	8/1/2022	8/1/2023
PROMOTION	98,147	100,110	102,112	104,154	106,237	108,362
6 MONTH	102,281	104,327	106,413	108,541	110,712	112,926
1 YEAR	110,563	112,774	115,030	117,330	119,677	122,070
2+ YEAR	118,820	121,196	123,620	126,093	128,615	131,187

PATERSON FIRE OFFICERS ASSOCIATION (CAPTAINS)						
	8/1/2019	8/1/2020	8/1/2021	8/1/2022	8/1/2023	
Salary Increase	0.00%	0.00%	0.00%	2.00%	2.00%	
Promotion	\$ 98,147	\$ 98,147	\$ 98,147	\$ 100,110	\$ 102,112	
6-12 months	\$ 102,281	\$ 102,281	\$ 102,281	\$ 104,327	\$ 106,413	
After 1st Yr	\$ 110,563	\$ 110,563	\$ 110,563	\$ 112,774	\$ 115,030	
After 2nd Yr	\$ 118,820	\$ 118,820	\$ 118,820	\$ 121,196	\$ 123,620	

CAPTAIN						
STEP	CURRENT	8/1/2019	8/1/2020	8/1/2021	8/1/2022	8/1/2023
Salary Increase	0.00%	0.00%	1.00%	2.00%	1.50%	1.50%
PROMOTION	98,147	98,147	99,128	101,111	102,627	104,167
6 MONTHS	102,281	102,281	103,304	105,370	106,951	108,555
1 YEAR	110,563	110,563	111,669	113,902	115,611	117,345
2+ YEAR	118,820	118,820	120,008	122,408	124,244	126,108

BATTALION 2% INCREASE						
STEP	CURRENT	8/1/2019	8/1/2020	8/1/2021	8/1/2022	8/1/2023
PROMOTION	127,954	130,513.08	133,123	135,786	138,502	141,272
6 MONTH	137,090	139,832	142,628	145,481	148,391	151,358
2+ YEAR	146,224	149,148	152,131	155,174	158,278	161,443

PATERSON UNIFORMED BATTALION CHIEFS' ASSOCIATION						
	8/1/2019	8/1/2020	8/1/2021	8/1/2022	8/1/2023	
Salary Increase	0.00%	0.00%	0.00%	2.00%	2.00%	
Promotion	\$ 127,954	\$ 127,954	\$ 127,954	\$ 130,513	\$ 133,123	
6-30 months	\$ 137,090	\$ 137,090	\$ 137,090	\$ 139,832	\$ 142,628	
After 30 months	\$ 146,224	\$ 146,224	\$ 146,224	\$ 149,148	\$ 152,131	

BATTALION						
STEP	CURRENT	8/1/2019	8/1/2020	8/1/2021	8/1/2022	8/1/2023
Salary Increase	0.00%	0.00%	1.00%	2.00%	1.50%	1.50%
PROMOTION	127,954	127,954	129,234	131,819	133,796	135,803
6 MONTHS	137,090	137,090	138,461	141,230	143,348	145,498
2+ YEAR	146,224	146,224	147,686	150,640	152,900	155,193

DEPUTY 2% INCREASE						
STEP	CURRENT	8/1/2019	8/1/2020	8/1/2021	8/1/2022	8/1/2023
PROMOTION	152,017	155,057	158,158	161,322	164,548	167,839
6 MONTH	157,808	160,964	164,183	167,467	170,816	174,233
2+ YEAR	163,600	166,872	170,209	173,614	177,086	180,628

PATERSON DEPUTY FIRE CHIEFS' ASSOCIATION						
	8/1/2019	8/1/2020	8/1/2021	8/1/2022	8/1/2023	
Salary Increase	0.00%	0.00%	0.00%	2.00%	2.00%	
Promotion	\$ 152,017	\$ 152,017	\$ 152,017	\$ 155,057	\$ 158,158	
6-30 months	\$ 157,808	\$ 157,808	\$ 157,808	\$ 160,964	\$ 164,183	
After 30 months	\$ 163,600	\$ 163,600	\$ 163,600	\$ 166,872	\$ 170,209	

DEPUTY						
STEP	CURRENT	8/1/2019	8/1/2020	8/1/2021	8/1/2022	8/1/2023
Salary Increase	0.00%	0.00%	1.00%	2.00%	1.50%	1.50%
PROMOTION	152,017	152,017	153,537	156,608	158,957	161,341
6 MONTHS	157,808	157,808	159,386	162,574	165,012	167,488
2+ YEAR	163,600	163,600	165,236	168,541	171,069	173,635

In terms of sustainability, even though the \$266,206 residual difference between the City's offer and the undersigned's award carries into 2024, which is beyond the stipulated term of the new contract, I do not see a reason to avoid acknowledging the carryover effects. The City could use a portion of its 1.25 million cap bank in CY 2024 to satisfy the obligation. In fact, had the City raised the levy in 2023 no less than 2% over 2022 (as required for by DCA for CY 2022), then there would be much more flexibility to resolve this dispute with almost \$984,000 remaining banked. Acknowledging that the City does not want to fully tax its residents, nonetheless, the

ratio of \$266,206 to a 309-million-dollar budget is .08615%. Finally, limited bonding, if really necessary, is another means of bridging the reasonable gap between the undersigned's 0-1-2-1.5-1.5 award and the City's 0-0-0-2-2 salary offer.

In the end, I am convinced that the 16g factors, especially the public interest and internal pattern of settlement criteria, are best served by the undersigned's Award as opposed to the acceptance of either party's proposals. Accordingly, I award a 0% increase for August 1, 2019 through July 31, 2020; a 1% increase for August 1, 2020 through July 31, 2021; a 2% increase for August 1, 2021 through July 31, 2022; a 1.5% increase for August 1, 2022 through July 31, 2023; and a 1.5% increase for August 1, 2023 through December 31, 2023 (carrying over to July 31, 2024). Lastly, I award the sum of \$300,000 in retro pay for August 1, 2022 through July 31, 2023 and \$150,000 for August 1, 2023 through December 31, 2023 (as set forth in Appendix D).

NON-ECONOMIC AWARD

Term- August 1, 2019 through December 31, 2023 (Stipulated)

Merge Deputy Chiefs, Battalion Chiefs and Captains into one consolidated union contract (Stipulated).

Article VII

Education Benefits

- B. The employees shall receive education benefits in accordance with City Ordinance dated 12/21/73 and its amendment dated 11/8/84 and made a part of this Agreement. Copies of the City Ordinance may be examined in the Office of the Fire Director.

PFOA

In addition to his/her base salary and other compensation, a firefighter shall be paid the sum of one thousand two hundred fifty dollars (\$1,250) for having obtained an Associate's Degree, two thousand five hundred dollars (\$2,500) for having obtained a Bachelor's Degree, or three thousand five hundred dollars

(\$3,500) for having obtained a Master's Degree in one of the following courses of study:

1. Fire Science
2. Fire Service Administration
3. Social Sciences (Psychology, Sociology, Criminology)
4. Foreign Language Degrees
5. Public Safety Leadership
6. Law
7. Computer Science
8. Finance or Accounting
9. Political Science
10. Public Administration
11. Homeland Security
12. Education
13. Nursing
14. Any other course of study reasonably related to the job functions of a firefighter. The City shall be responsible for determining what courses of study are reasonably related to the job functions of a firefighter.

CITY

The sum of \$1,250.00 shall be paid to an employee for having obtained an associate degree (which requires sixty (60) credits), \$2500.00 for having obtained a Baccalaureate Degree (which requires one-hundred-twenty (120) credits), and \$3500.00 for having obtained a master's degree. This amount will not be added to the employee's base salary. The employee must have earned the degree from an accredited institution recognized by the New Jersey Board of Higher Education and must have graduated with an overall average grade of "C" or better or equivalent grade for each course. The only areas of study that will entitle an employee to this education benefit are the below:

- Fire Science.
- Fire Service Administration.
- Foreign languages.
- Public Safety Leadership.
- Public Administration.
- Homeland Security.
- Nursing.

Award

The City's determination of the courses that have immediate benefit to the department for this unit must be given deference. The City's concerns that PFOA members may take courses or earn degrees shortly before they retire and/or earn degrees in areas deemed not helpful to daily operations are understandable. Moreover, the PFOA has not shown a persuasive need to change the status quo to the extent it seeks to do so. Through cross examination, the City also demonstrated that unit members do not even need a college degree to perform their jobs, e.g., Deputy Chief Rodriguez and Battalion Fire Chief Walker. Rather, an officer can move up the ranks based on on-the-job training and experience.

Based on the foregoing, I will award the City's proposal with one category added as follows:

“Any other course of study reasonably related to the job functions of a fire superior officer. The City shall be responsible for determining what courses of study are reasonably related to the job of fire superior officer and the determination may only be grieved through the internal grievance procedures with no right to arbitration.”

Article XI Vacation-Holiday-Personal Leave Days.

The Captains' contract provides in Article XI Vacation-Holiday-Personal Leave Days, that an employee receives 17 days each calendar year to be used for vacation, holiday, and personal days. Of the 17 days, two are personal days. Only 11 days can be carried over to the next year if unused. Employees are guaranteed four days of leave during the summer, from late June to early September. If the employee works a holiday, in lieu of being paid when working a holiday, they will receive 36 hours of holiday pay in their base salaries. Although this proposal by the PFOA was not timely submitted, the City indicated agreement to the following extent:

The City is amenable to allowing the carryover of 20 days with no additional payout.

Current Language

Article XI, Vacation-Holiday-Personal Leave Days, A (2) of the contract reads as follows:

2. Employees may carry over up to eleven (11) leave days to the following year.

Proposed Language

The City Agrees to the Union’s request to amend Article XI, Vacation-Holiday-Personal Leave Days, A (2) of the contract as follows:

2. Employees may carry over up to twenty (20) leave days to the following year with no additional pay out.

Award

Article XI, Vacation-Holiday-Personal Leave Days, A (2) of the contract as follows:

2. Employees may carry over up to twenty (20) leave days to the following year with no additional pay out.

The PFOA proposes that captains that “leave days assigned by seniority.” The City is amenable to assigning leave days by seniority. The Union has not proposed language. The City proposes adding a sentence to Section XI, B (2): If there are multiple requests for leave on the same day, the requests shall be granted in accordance with seniority.

Award

Add under Article XI: “In the event that there are multiple requests for leave on the same day, the requests shall be granted in accordance with seniority.”

Release Time and Man For Man Coverage

The PFOA proposes that captains be able to be released any time during the shift when there is man-to-man coverage. The practice is to allow such release time for early or late relief. The City rejects this proposal.

Award

No change. The PFOA has not produced sufficient evidence demonstrating why the status quo should be changed. This unit works according to a 24/72 schedule, which provides ample downtime from work so as not to also justify departures from work other than early or later in the tour.

Relinquishment of EMT Certification

The PFOA proposes permitting all members the right to relinquish the EMT certification. Article IX, “Other Payments” F., “Certifications” 1., states: “The City has the right to send all employees to any training it deems necessary. The City will pay any training costs. If an employee is required to attend training while off duty, they shall be entitled to overtime pay or compensatory time at the discretion of the City.” Here, I note the clause tracks the right of management to determine the qualifications necessary for the job, including the right to train employees to achieve the requisite qualifications. The clause also respects the negotiability of compensation for such training.

Subsection F2., entitled “Emergency Medical Technician”, clause a., contains less compulsory language than subsection F.1., discussed above. It states: “All Captains who take the EMT Certification or Recertification course shall take that course during their regular working hours and shall be paid for their time.” However, Subsection F1 would apply to the EMT Certification as well. Clause a. continues by noting that a Captain would be provided with compensatory time off for taking the course outside of working hours. It also establishes the City’s responsibility to bear the expense of the course. F.2.b establishes that all Captains who receive an

EMT Certification or Recertification shall be paid the sum of Two Thousand (\$2,000.00) dollars per year payable in twenty-six (26) equal payments.

The PFOA's rationale for seeking the elimination of the duty to become EMT certified was not particularly convincing. Deputy Chief Rodriguez testified that all firefighters are first responders and allowing officers to relinquish EMT certifications would save the City money with respect to the \$2,000.00 EMT stipend.

The undersigned acknowledges that the EMT role can be demanding given the calls for service stemming from suicides, homicides, domestic violence, etc. However, there is an element of job security for at least a handful of superior officers. For 2022, ambulance fees/revenues were anticipated at \$3,070,747. However, \$3,457,469 was realized in the 2022 budget. The City anticipates raising \$3,400,000 in 2023. Thus, in one aspect, the unit has helped pay its own cost since 2006 by way of performing EMT functions and this creates job security. In fact, the City and DCA have discussed hiring civilian EMTs and laying off upward of seventy firefighters which, in turn, would have a trickle up effect on the unit here. For these reasons, I find that the PFOA has not established a sufficient basis to change the status quo.

The PFOA proposes that Article XV – Health Benefits – Section A – be amended to “mimic Article VII of PFA Local 2’s MOA entered with the City on May 31, 2022”.

The PFA MOU provides:

ARTICLE VII - Health Benefits

Replace this Article with the following:

The Employer agrees to provide coverage under the State Health Benefits Plan for all employees and their dependents as defined under the respective policies of insurance. The Employer agrees to provide major medical, dental, and prescription drug insurance to all full-time employees and their dependents. For the duration of this Agreement, each employee shall make the

required contribution to this plan at the Tier 4 level under Chapter 78. Employees shall become eligible for all health benefits enumerated above upon the completion of ninety (90) calendar days.

The contribution shall apply to employees for whom the employer has assumed a health care benefits payment obligation to require that such employees pay at a minimum the amount of contribution specified in this section for health care benefits coverage. An employee on leave without pay who receives benefits under the State Health Benefits Plan shall be required to pay the requisite contribution and shall be billed by the employer for these contributions. Healthcare benefits coverage will cease if the employee fails to make timely payments. The parties agree that should an employee voluntarily waive all coverage under the State Health Benefits Plan and provide certification to the City that he/she has other health insurance coverage; the City will waive the contribution for that employee.

The City agrees to pay an incentive payment to any City employee who waives both medical and prescription coverage under the City's State Health Benefits Program ("SHBP"). The City agrees to pay an annual incentive payment to any City employee who, at the time of open enrollment, is eligible for and waives both medical and prescription coverage under the SHBP. The SHBP waiver incentive payment shall not exceed 25% of the amount saved by the City because of the waiver or \$5,000, whichever is less. In order to be deemed eligible for the payment, the employee must waive coverage at open enrollment of each year and the employee's waiver must remain in effect for the full benefit year. The employee's waiver must follow the requirements outlined by the New Jersey Division of Pensions and Benefits. Should an employee seek reinstatement of health benefits coverage with the SHBP at any time during a benefit year, the reinstatement of coverage with the SHBP will void the employee's eligibility for the SHBP waiver payment. The City will issue the payment in full to each eligible City employee at the beginning of the next benefit year.

The City agrees that if the SHBP removes the Direct 10 plan, the City will immediately seek new coverage under the SHBP that is equal to or better to the Direct 10 plan. If none exists, the City agrees to notify the Association of the removal of the Direct 10 to negotiate the terms of the new health insurance benefits.

The City shall pay the full cost of hospital, medical and drug prescription coverage for the individual employee, spouse, and dependent children up to age 26 for employees who retire on a paid pension under the following circumstances:

1. Employee retires with 20 years or more of continuous service with the City and has attained 20 years of credit in the New Jersey pension plan.
2. Employees who retires on or after age 62 with fifteen (15) or more years of service with the City and has attained 15 years of credit in the New Jersey pension plan.
3. Employee retires on an accident disability pension or ordinary pension with at least five (5) years of continuous service with the City.

Retirees hired after ratification must pay 1.5% of pension payment as medical benefit contribution, which such contribution will be capped at a pension amount of \$100,000.

Upon retirement, if you and/or your dependents are age 65 or have been on Social Security Disability for 24 months or more, you are required to enroll in Medicare Parts A and B. If you have not enrolled in both parts of Medicare, you should contact Social Security to apply 90 days prior to your retirement date.

For employees who retires on and after September 1, 1980, the City will reimburse the cost of the Medicare Part B premium for the retiree only.

The surviving spouse and dependent children of a retiree who dies shall be entitled to remain enrolled in the City Hospital-Medical-Prescription plan, the premiums being paid by the City. The spouse's coverage shall terminate upon the spouse's death or remarriage. Dependent children shall remain enrolled in the Hospital/Medical/Prescription plan until age 26. Dependent children shall remain enrolled in the dental plan (if applicable) until age 23.

The City reserves the right to self-insure or change insurance companies in providing health benefits agreed to hereunder as long as the benefits set forth in this Agreement, and presently in effect, are equal to or better. The Association will be notified by the City in advance regarding such changes.

Award

The PFOA's offer is granted. There is no sound reason PFOA and PFA members should have different health benefits language in their respective agreements when the City has an obligation to uniformly apply its health benefits plans and programs to both groups. The waiver provision is admittedly an economic item; however, it is an economic item benefiting both parties.

I will next address the City's non-economic proposals.

Paterson Fire Officers Association (Captains) – Article I Recognition, B. Management Rights

Paterson Uniformed Battalion Chiefs' Association – Article I Recognition, B. Management Rights

Paterson Deputy Fire Chiefs' Association – Article I, B. Management Rights

Proposed New Language to be added to Article I, Section A

The City of Paterson is a civil service municipality. This means that it follows the New Jersey Civil Service Commission's human resources (HR) management system to the extent it applies to personnel issues affecting its workforce, including all classified positions in the Fire Department. The parties acknowledge and agree that the administrative and procedural provisions and controls of Civil Service Law and the Rules and Regulations promulgated thereunder, are to be observed in the administration of this Agreement, except to the extent that this Agreement pertains to subjects not therein contained or where this Agreement is contrary to, or in conflict with such provisions and controls and deviation from such rule or control is statutorily permitted. Nothing herein shall be construed to deny any individual employee his rights under the Civil Service Law or Regulations.

Pursuant to N.J.S.A. 40A:14-9, paid employees in a municipal fire department are required to be members of the State of New Jersey's Police and Firemen's Retirement System (PFRS). The parties acknowledge and agree that the administrative and procedural provisions and controls of the State of New Jersey, Division of Pensions and Benefits with respect to member in and retirement from the PFRS are to be observed in the administration of this Agreement, except to the extent that this Agreement pertains to subjects not therein contained or where this Agreement is contrary to, or in conflict with such provisions and controls and deviation from such rule or control is statutorily permitted. Nothing herein shall be construed to deny any individual employee his right to retire under PFRS.

Rationale

The City of Paterson is a New Jersey civil service municipality, meaning it follows the New Jersey Civil Service Commission (CSC) system of human resources (HR) management of its staff, and firefighters are classified, civil service job titles. That being the case, there should be express language added to all three contracts that make the City's ability to rely on CSC statutes, regulations, and decisions beyond reproach to the extent they apply to a particular issue.

Award

No change. The law is inherent in every public sector labor agreement. Similarly, the inclusion of acknowledgements regarding the Civil Service and pension laws adds nothing to the impact or application of those laws and regulations. In the end, the City has not shown a persuasive reason the status quo needs to be changed to include such language. Also, there are countless laws and regulations which pertain to fire departments, firefighters, workplace safety, etc. which gain no greater force by being acknowledged in a labor contract. Accordingly, I reject the City's proposal.

Paterson Fire Officers Association (Captains) – Article I Recognition, D. Legal Defense of Employees

Paterson Uniformed Battalion Chiefs’ Association – Article XVII Legal Defense of Employee

Paterson Deputy Fire Chiefs’ Association – Article XIX, Legal Defense of Employees

Current language

The City shall provide for the legal counsel in the defense of an employee in accordance with N.J.S.A. 40A:14-155 whenever an employee is a defend ant in an action or legal proceeding arising out of or incidental to the performance to his/her duties including false arrest, detention, imprisonment, malicious prosecution, libel, slander, defamation or violation of rights or privacy, wrongful entry or eviction or other invasion of privacy.

Proposed New Language:

The City shall provide for the defense of a employees in accordance with N.J.S.A. 40A:14-28. The City is only required to provide for the defense when it arises out of or is incidental to the performance of duty. The City will also be guided by N.J.S.A. 59:10-4 in the New Jersey Tort Claims Act as to whether the City is obligated to provide such a defense. The City may reserve the right not to provide a defense to an employee when the employee’s actions are outside the scope of his or her employment or constitutes a crime, actual fraud, actual malice or willful misconduct, per N.J.S.A. 59:3-14.

Rationale

The Captains’ contract cites to “N.J.S.A. 40A:14-155,” which is the statute in Title 40, Municipalities; Police that deals with defense of police officers when they are sued. The corresponding statute for firefighters is N.J.S.A. 40A:14-28. So, the citation needs to be fixed.

Award

Granted. The correct legal authority for the defense of members of the PFOA should be incorporated.

Paterson Fire Officers Association (Captains) – Article XXII Prior Practices

Paterson Uniformed Battalion Chiefs’ Association – Article XXI Prior Practices

Paterson Deputy Fire Chiefs’ Association – Article XXIII Prior Practices

Proposed New Additional Language- subsection C:

To be a “right, benefit or privilege enjoyed by employees,” the thing at issue must be a common practice within the Fire Department, such as an established protocol. The employee must be able to demonstrate that what is being claimed regularly happens, and something that has only happened once or very infrequently would not suffice. Employees are only entitled to the rights and benefits provided by the labor agreement to which they are a member, and to no other labor contract to which they are not a member.

Rationale

See e.g. In the Matter of City of Newark and Police Superior Officers’ Association of Newark, N.J., Inc., 2000 NJ PERC Lexis 190, * 34-35 (July 20, 2000) (citing Somerville Boro., P.E.R.C. No. 84-90, 10 NJPER 125, 126 (P15064 1984), quoting from Elkouri and Elkouri, How Arbitration Works, p. 391 (BNA 1973) (holding, for there to be an “established practice,” PERC “has defined [a] past practice as a course of events . . . which is repeated, unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties.”); accord In the Matter of Borough of Milltown and PBA Local 338, 2021 NJ PERC Lexis 27, * 24 (March 26, 2021); In the Matter of Township of Middletown and PBA Local 124, 2006 NJ PERC Lexis 245, * 12 (June 6, 2006).

Award

No change:

Like a proposal to codify laws into a collective bargaining agreement, the subject of what constitutes a “prior practice” is best left for a case-by-case determination by an arbitrator.

Paterson Fire Officers Association (Captains) – Article XVIII Check-Off

Paterson Uniformed Battalion Chiefs' Association – Article X Dues Checkoff

Paterson Deputy Fire Chiefs' Association – Article II Dues Checkoff

Proposed New Language:

Employees shall be eligible to withdraw their membership only as of July 1 of each year provided the notice of withdrawal is filed prior to July 1 with the responsible payroll clerk of the City. Unless the employee withdraws authorization for the deduction of union dues, the City will continue to deduct dues. The movement of an employee from one title to another title and/or from one unit to another unit will not affect dues deduction unless the new title or unit is not represented by the Union.

Rationale

The Captains' contract's article on union dues has no reference to the WDEA considering the U.S. Supreme Court's decision whereby union members can withdraw from the union. This is not surprising due to the age of the current contracts. The City proposes adding a provision to the contracts that the members can only withdraw if they give notice by a specific date.

Award

Granted. In this instance, incorporation of the law into the contract is necessary to guide an employee in exercising their right to support or not a majority representative through payroll deductions.

All Other Proposals Not Awarded Herein Are Rejected.¹⁷

Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken the statutory limitation imposed on the local tax levy cap into account in making the award. My Award also explains how the statutory criteria factored into my final determination.

¹⁷ For all other changes needed to create a unified contract, the parties shall endeavor to use the most clear and concise language available among the three separate contracts. If a dispute arises over the drafting of a unified contract, then either party should consider requesting the appointment of a mediator from the PERC Director of Conciliation. There was simply too little time in this proceeding to fully work out a blending of all three contracts into one. The parties are left to finish that task.

Finally, I note the following net annual economic changes during the contract term resulting from my Award: 8/1/19-7/31/20 (0); 8/1/20-7/31/21 (0); 8/1/21-7/31/22 (0); 8/1/22-7/31/23 (\$300,000); and 8/1/23-12/31/23 (\$150,000).

Respectfully submitted,

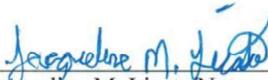


Joseph Licata

Dated: December 18, 2023

State of New Jersey)
):SS
County of Bergen)

On the 18th day of December, 2023, before me personally came and appeared Joseph Licata, to me known and known to me to be the person described herein who executed the foregoing instrument and he acknowledged to me that he executed the same.



Jacqueline M. Licata/Notary Public

JACQUELINE M. LICATA
Commission # 50026026
Notary Public, State of New Jersey
My Commission Expires
November 09, 2025

