

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

CITY OF PERTH AMBOY,
“City or Employer”

- and -

**INTEREST ARBITRATION
DECISION AND AWARD**

Docket No. IA-2021-018

IAFF LOCAL 4070
“IAFF or Association.”

Before: Brian W. Kronick, Esq.
Interest Arbitrator

Appearances:

For the City:

Robert T. Clarke, Esq.
H. Thomas Clarke, Esq.
Appruzese, McDermott, Mastro & Murphy, P.C.

For the IAFF:

Raymond G. Heineman, Esq.
Kroll Heineman Ptasiwicz & Parsons, LLC

PROCEDURAL HISTORY

The City of Perth Amboy (the “City or Employer”) and IAFF Local 4070 (the “IAFF or Association”) are parties to a Collective Negotiations Agreement with an effective term of January 1, 2014, through December 31, 2018 (the “2018 Agreement”). The IAFF represents the City’s Fire Officers including Captains and Battalion Chiefs.

The parties met and engaged in negotiations for a successor collective negotiations agreement on four (4) occasions including September 19, 2019, and April 17, 2019. The parties engaged in mediation sessions with a mediator appointed by the New Jersey Public Employment Relations Commission (“PERC”). On May 3, 2021, the IAFF filed the instant Petition to Initiate Compulsory Interest Arbitration (the “Petition”) with PERC pursuant to the Police and Fire Interest Arbitration Reform Act, N.J.S.A. 34:13A-16 (the “Act”). On May 17, 2021, PERC randomly appointed me as Interest Arbitrator. On June 18, 2021, an in-person mediation session was held as required by the Act. Since a settlement was not achieved through mediation, an Interest Arbitration hearing was scheduled for July 20, 2021, and was held virtually via Zoom.

The parties submitted Final Offers on July 19, 2021 and could amend their Final Offers up to the close of hearing on July 20, 2021. At the hearing, both parties were represented by competent and professional counsel, and each had an opportunity to present evidence and offer testimony. The parties submitted exhibits electronically. The City submitted one hundred (100) exhibits and offered the testimony of Jill Goldy, City Financial Officer (“Goldy”). The IAFF submitted ninety-three (93) exhibits and offered testimony from Dr. Raphael Caprio, Ph.D., IAFF financial consultant (“Caprio”). The testimony from all the witnesses was highly credible and the financial exhibits were detailed in outlining the City’s budget and finances. The parties were given until Wednesday August 4, 2021, to submit post-hearing briefs.

This proceeding is governed by the Police and Fire Interest Arbitration Reform Act as set forth in N.J.S.A. 34:13A-16 through N.J.S.A. 34:13A-16.9 as amended on June 24, 2014, by P.L. 2014, c.11 (the “Act”). The Act requires the use of conventional arbitration. The strict limits on the amount of base salary increases have sunset and this agreement is not subject to those limitations. Still, any Interest Arbitration Award must be in compliance with the Act, the appropriations and tax levy limitations in P.L. 1976, c. 68 (C. 40A:4-45, *et. seq.*) and Section 10 of P.L. 2007, c. 62 (C. 40A:4-45:45) and, most importantly, must be in the interest and welfare of the public. This Interest Arbitration Award is issued in accordance with the 16g interest arbitration criteria to the extent deemed relevant. *See* N.J.S.A. 34:13A-16.7(b) and N.J.S.A. 34:13A-16g.

Pursuant to P.L. 2014, c. 11, the arbitrator has 90 days from appointment, or by August 16, 2021, in which to render an award. This has resulted in a greatly compressed time period for consideration and analysis of the evidence and issuance of the Award.

THE FINAL OFFERS

In accordance with the Act, each party submitted a Final Offer (the "Final Offer"). These Final Offers are set forth as follows:

City of Perth Amboy Final Offer

1. DURATION: 1/1/2019 through 12/31/2022

2. WAGES:

The following SALARY GUIDE is based on the below annual increases to the Senior Firefighter salaries:

i.	2019	-	1.5%	95,065
ii.	2020	-	1.5%	96,491
iii.	2021	-	1.5%	97,938
iv.	2022	-	1.5%	99,407

SALARY GUIDE

		1/1/19	1/1/20	1/1/21	1/1/22
	Diff. to Sr. FF	10%	10%	10%	10%
Captain		\$ 104,572	\$ 106,140	\$ 107,732	\$ 109,348
		1/1/19	1/1/20	1/1/21	1/1/22
		7.5%	7.5%	7.5%	7.5%
Battalion Chief	Diff. to Capt.	\$ 112,415	\$ 114,101	\$ 115,812	\$ 117,549

FINAL NON-ECONOMIC OFFER

The City does not have any non-economic proposals.

STIPULATIONS

The parties agreed to the attached issues in negotiations. (See Addendum A)

FINAL IMPACT OF THE CITY'S FINAL OFFER TO LOCAL 4070

The financial impact of the City's Final Offer to Local 4070 is set forth in Addendum B. Any increases above that final offer will significantly impact on the salaries of other City employees and thus have a much greater and widespread financial impact on the City.

IAFF FINAL OFFER

The IAFF Final Offer is as follows:

DURATION: January 1, 2019 through December 31, 2022.

ARTICLE XIII- WAGES – Fire Officers

Amend the Article and Salary Guides by increasing the Rank Differentials between Fire Officers and Senior Firefighters as follows:

	2018	1/1/19	1/1/20	1/1/21	1/1/22
Captain to Sr. FF	10%	13.75%	17.5%	21.25%	25%
Battalion Chief to Sr. FF	18.97%	26%	34%	42%	50%

Year	Sr. FF	Capt	\$ Diff	% Diff	BC	\$ Diff	% Diff
2018	\$92,241	\$101,526	\$9,285	10.07%	\$109,740	\$17,499	18.97%
2019	\$95,065	\$108,136	\$13,071	13.75%	\$119,782	\$24,717	26.00%
2020	\$96,491	\$113,377	\$16,886	17.50%	\$129,298	\$32,807	34.00%
2021	\$97,938	\$118,750	\$20,812	21.25%	\$139,072	\$41,134	42.00%
2022	\$99,407	\$124,259	\$24,852	25.00%	\$149,111	\$49,704	50.00%

Add language on differential as follows:

The differentials between ranks shall be maintained following the expiration of the Agreement.

BACKGROUND

City Background and Demographics

The City of Perth Amboy (the “City”) is located in Middlesex County. The City is governed under the Mayor-Council system of municipal government under the Faulkner Act. The governing body is comprised of the Mayor and the City Council, all of whom are elected at-large on a non-partisan basis. The City Council is comprised of five members who are elected to four-year terms of office on a staggered basis, with two or three seats coming up for election in even-numbered years. The Mayor also serves a four-year term of office, which is up for election the same year that two council seats are up for vote. In October 2010, the City Council voted to shift the City's non-partisan elections from May to November, with the first balloting held in conjunction with the General Election in November 2012.

The 2010 United States census counted 50,814 people, 15,419 households, and 11,456 families in the city. The population density was 10,806.8 per square mile (4,172.5/km). There were 16,556 housing units at an average density of 3,521.0 per square mile (1,359.5/km). The racial makeup was 50.26% (25,541) White, 10.54% (5,358) Black or African American, 1.10% (561) Native American, 1.69% (859) Asian, 0.05% (27) Pacific Islander, 30.77% (15,634) from other races, and 5.58% (2,834) from two or more races. Hispanic or Latino of any race were 78.10% (39,685) of the population. The City's Hispanic population was the second-highest percentage among municipalities in New Jersey as of the 2010 Census, ranked behind Union City with 84.7%.

Of the 15,419 households, 40.0% had children under the age of 18; 40.1% were married couples living together; 24.6% had a female householder with no husband present and 25.7% were non-families. Of all households, 20.3% were made up of individuals and 7.5% had someone living alone who was 65 years of age or older. The average household size was 3.25 and the average family size was 3.65.

27.3% of the population were under the age of 18, 11.0% from 18 to 24, 30.2% from 25 to 44, 22.2% from 45 to 64, and 9.3% who were 65 years of age or older. The median age was 32.4 years. For every 100 females, the population had 97.3 males. For every 100 females ages 18 and older there were 94.3 males.

The Census Bureau's 2006–2010 American Community Survey showed that (in 2010 inflation-adjusted dollars) median household income was \$47,696 (with a margin of error of +/- \$3,644) and the median family income was \$53,792 (+/- \$2,943). Males had a median income of \$38,485 (+/- \$2,450) versus \$30,078 (+/- \$3,452) for females. The per capita income for the city was \$20,162 (+/- \$933). About 16.3% of families and 19.4% of the population were below the poverty line, including 28.8% of those under age 18 and 15.2% of those age 65 or over.

City Finances

The City's 2021 total budgeted appropriations were \$81,131,907 which includes: \$1,881,318 in grants; \$33,546,219 in salaries and wages; \$13,892,599 in insurance; \$11,700,000 in debt service and capital improvements; \$7,447,464 in pensions; \$1,400,000 in FICA/Medicare; \$1,806,000 in utilities; and \$9,457, 905 in other appropriations. The City's

total budgeted appropriations increased from \$78,774,593 in 2020 and \$78,754,738 in 2019. The City ranks sixth in total appropriations of the 25 County municipalities down from fourth in 2011.

The City's 2021 municipal budget reflected total budgeted revenues of \$81,131,907, which includes grants of \$1,881,318; \$58,642,243 from taxation; \$9,237,369 in State aid; \$5,144,274 in surplus funds; \$2,495,448 in Special items (PILOT/CSA); \$1,625,740 in local revenues; \$1,190,514 in Library Tax; and \$885,000 in Dedicated Uniform Construction Code fees. The City's total budgeted revenues were \$78,774,593 in 2020 and \$78,754,738 in 2019.

The City's Fund Balance as of January 1, 2018, was \$7,995,373, \$9,938,907 in 2019, \$11,040,506 in 2020, with a Fund Balance on December 31, 2020 of \$10,352,719. The estimated fund balance for 2021 is \$9,913,445. The surplus balance remaining in 2018 was \$5,848,907, in 2019 was \$6,774,506, in 2020 was \$5,208,445 and in 2021 is estimated to be \$4,913,445.

The City's known liabilities total \$1,445,149,888. The known liabilities include debt service of \$264,742,127; OPEB of \$629,944,860; PERS pension of \$29,769,787; PERS pension of \$31,635,688; accumulated leave of \$7,650,626; CSOs of \$300,000,000; the Fayette Street Bridge of \$10,000,000; General Capital Projects of \$58,814,799; the Parking Utility of \$567,000; and the Water/Wastewater Utility of \$112,025,000.

The City's gross tax rate in 2020 was \$2.978 comprised of \$1.773 municipal, \$.792 local school district and .413 County. The City's tax rate in 2019 was \$2.989 comprised of \$1.776 municipal, \$.803 local school district and .410 County. The City's tax rate in 2018 was \$2.963 comprised of \$1.758 municipal, \$.816 local school district and .389 County. The City's tax rate ranks 9th out of the 25 County municipalities.

As of December 31, 2020, the City's total workforce was 379 employees with the Police Department comprising 124 employees; the Fire Department 71 employees; Public works 71 employees; 101 employees in other departments; with 10 others at the utilities (parking, water, marina). Salaries and wages were \$31,299,040 in 2019 or 39.96% of the budget. In 2020, salaries and wages were \$32,838,398 or 41.97% of the budget and in 2021 were \$33,546,219 or 42.33% of the budget.

The City has a Collective Negotiation Agreement with IAFF Local 286 representing Firefighters for the term January 1, 2019 through December 31, 2022. The City has a Collective Negotiation Agreement with PBA Local 13 representing Police Officers for the term January 1, 2019 through December 31, 2024. The City has a Collective Negotiations Agreement with the International Brotherhood of Teamsters Local 97 representing its blue-collar employees for the term January 1, 2019 through December 31, 2022. The City has a Collective Negotiations Agreement with the Police Superior Officers that expired December 31, 2018 and is currently in negotiations for a successor agreement.

Perth Amboy Fire Department

As one of the oldest fire departments in Middlesex County, the Perth Amboy Fire Department provides fire protection, EMS, and rescue services for the City and surrounding communities. The Fire Department is equipped to respond to a wide variety of calls for assistance above and beyond fire type emergencies. The Department operates a year-round Fire/Rescue boat that protects an assigned area of the Port of New York and New Jersey. In addition, the department's Special Operations Bureau currently provides technical rescue services throughout Middlesex County.

The Department responds to an average of 2,500 emergency incidents a year ranging from fires and emergency medical calls to rescue and other emergency type incidents. The Department responded to a total of 2,004 incidents in 2020 including 182 fires, of which 44 were structural fires and 7 were multiple alarm fires. The Department has traditionally been a busy department, responding to fires and other incidents. The Fire Department is an essential service to the City and its residents and a key element in the continuation of the City's economic growth and development.

IAFF Local 4070

IAFF Local 4070 represents the City's Fire Officers. The unit includes Captains and Battalion Chiefs. As of December 31, 2018, the unit totaled eleven (11) members with six (6) Captains and five (5) Battalion Chiefs. In January 2019, the unit was increased to fourteen (14) members by the promotion of three (3) Senior Firefighters to Captain. One Captain was promoted to Battalion Chief. In September 2020, the City promoted four (4) Senior firefighters to Captain for a total unit membership of eighteen (18); six (6) Battalion Chiefs and twelve (12) Captains.

As of December 31, 2018, Captains were earning base pay of \$101,526 and Battalion Chiefs were at \$109,140. Fire Officers receive longevity in base pay paid on the employee's anniversary date, and holiday pay as part of base salary. The Fire Officers also receive certification pay and degree pay. As of December 31, 2018, the total cost out for the unit with these items was \$1,353, 868. As a result of the promotion of three (3) Senior Firefighters, the total salary increased in 2019 to \$1,834,640. In September 2020, four (4) Senior Firefighters were promoted to Captain increasing the total salary to \$2,455,043. The total salary in 2021 is projected to be \$2,594,494, and \$2,743,700 in 2022. The Fire Officers other benefits include uniform allowance, vacations and vacation pay, overtime, sick leave, bereavement leave, health benefits, life insurance and pension.

Negotiations in current round of bargaining

On December 31, 2018, the City's Collective Negotiations Agreements ("CNAs") with the PBA, Police Superior Officers' Association, IAFF Local 286 Firefighters, Fire Officers Local 4070 and Teamsters Local 97 all expired. After several negotiation sessions with IAFF Local 286 and the commencement of interest arbitration proceedings with Arbitrator Ira Cure, the parties reached

a settlement which provided for a four (4) year CNA, with a 1.5% across the board increase plus step where due on Firefighters' anniversary dates. The parties also agreed to a number of other issues which are set forth in the Memorandum of Agreement ("MOA") and CNA for the period January 1, 2019 through December 31, 2022. Those issues in the Firefighters' MOA that are relevant to the IAFF Local 4070 Fire Officers and were tentatively agreed to during negotiations with the IAFF are included in the City's Final Offer.

The City's Final Offer to Local 4070 is identical to the settlement reached with IAFF Local 286. The difference is that the Firefighters' settlement also has an anniversary step cost on top of the 1.5% across the board increase each year. The Firefighter's top pay is reached after 15 years and is the base used to apply the Fire Officer's differential. In the negotiations of the 2018 Agreement, the City increased the Captains differential in the second, third, and fourth years of the agreement from 7.5% in 2015 to 8% in 2016; 9% in 2017 and 10% in 2018. The Captains' increased differentials pass through to the Battalion Chiefs who received a 7.5% differential from the Captains. Over the four years of the last contract, the Fire Superior Officers received an additional 2.5% on top of the across-the-board increase negotiated by Firefighters.

Next, the City settled with Teamster Local 97, a blue-collar bargaining unit. The settlement also was for four (4) years with a 1.5% across the board increase each year.

Finally, after extensive negotiations, mediation and the appointment of Mark Winters as Arbitrator, the City reached an agreement with the PBA before hearings commenced. The PBA's financial consultant in those negotiations was Dr. Caprio who also prepared the PBA's financial analysis for the interest arbitration hearing. The new CNA provided for a 6-year settlement commencing January 1, 2019 through December 31, 2024. In the first year, the PBA received the same across the board increase of 1.5% as the Firefighters. Similarly, in the second year, the PBA received the same across the board increase as the Firefighters. In the third year, the PBA received a 1.75% across the board increase, which is a .25% higher than the Firefighters. The .25% more received by the PBA was the result of the large amount of breakage in the Police Department due to officers leaving the City for other Police Departments and retirements. In the last three years of the settlement the PBA received a 2.5% across the board in each year. In an effort to reduce turnover, starting salaries were raised from \$33,500 in 2018 to \$40,000 in April 2021. The only other economic benefit of significance in the PBA settlement was that Detectives, who did not receive any additional compensation, beginning in 2021, would receive a \$1,000 stipend each year and on-call pay was increased to \$25.00 per day. Similar to the Fire Department, the Police Department has a ten-step guide.

The two remaining bargaining units without CNAs are the Police Superiors and the Fire Officers IAFF Local 4070. The Police Superiors CNA, like Local 4070 here, also provides for a differential based upon Patrol Officers' top pay.

The non-bargaining unit increases during the years that are in question for Local 4070 were: 1.0% in 2019; 2.0% in 2020; and 1.5% in 2021.

The City's Final Offer to Local 4070 is identical to the settlement reached with IAFF Local 286: 1.5% in 2019; 1.5% in 2020; 1.5% in 2021; and 1.5% in 2022 with the current salary

differentials maintained. The IAFF seeks an increase to the salary differentials paid to Captains and Battalion Chiefs.

POSITION OF THE PARTIES

The City's Position

The ability to pay and interest and welfare of the public

The City submits it is necessary to study a side-by-side comparison of both offers in order to appreciate the magnitude of the IAFF's Final Offer. They also emphasize that besides the base salaries that have become the focus of this case, the Local 4070 Agreement contains generous supplemental compensation benefits on top of base salary. Fire Officers have the potential to earn an additional \$9,100 on top of their base salaries according to the City.

The City submits the following chart illustrates the significance of the IAFF's offer. They maintain that while total cost may not be staggering when compared to the City's total budget, the cost is staggering when the Arbitrator takes into consideration this cost is only for 18 of the City's 379 full time employees.

	<u>Firefighter</u>	<u>Captain</u>	<u>Battalion Chief</u>
2018	\$92,241	\$101,526	\$109,740
2019	\$95,065		
IAFF		\$108,136	\$119,782
City		<u>\$104,572</u>	<u>\$112,415</u>
Difference		\$ 3,564	\$ 7,367
2020		\$96,491	
IAFF		\$113,377	\$129,298
City		<u>\$106,140</u>	<u>\$114,101</u>
Difference		\$ 7,237	\$ 15,197
2021		\$97,938	
IAFF		\$118,750	\$139,072
City		<u>\$107,732</u>	<u>\$115,812</u>
Difference		\$ 11,018	\$ 23,260
2022		\$99,407	
IAFF		\$124,259	\$149,111
City		<u>\$109,348</u>	<u>\$117,549</u>
Difference		\$ 14,911	\$ 31,562
Cumulative Difference		\$ 36,730 per Captain	\$ 77,386 per Battalion Chief

The cumulative difference between the City's Final Offer and the IAFF's Final Offer is \$36,730 for each Captain and \$77,386 for each Battalion Chief.

The City submits the IAFF's offer results in a Captain's base salary increasing 30.71% or \$22,733 over the four-year term and a Battalion Chief's salary increasing 35.88% or \$39,371. On top of these increases, Fire Officers receive longevity, holiday pay, education pay, certification pay, uniform allowance, training pay, and instruction pay. The City asserts the increases are outrageous and far beyond the taxpayers' ability to pay noting that 13.5% of its residents are unemployed.

The City argues the cumulative cost of each Fire Officer increase is greater than the City's \$21,885 per capita income in 2019. The City maintains that even if the Arbitrator only awards a fraction of the IAFF's proposal, the impact on the City's salary structure would be huge, creating a budget nightmare, a tax crisis, and discontentment and strife among the City's other employees.

The City notes that we are in the midst of a second wave of the world's worst pandemic and in the opinion of many economists headed to a serious recession. The City maintains that catch up might be appropriate in 2023, but certainly not now, especially since the Firefighters settled at 1.5% in interest arbitration with the same City, same financial constraints, same internal comparability, and same Fire Department.

The City argues the total cost of the Local 4070 Final Offer, or even a fraction of that Final Offer, warrants its rejection. This analysis includes the cost of expanding the unit from 12 /11 Fire Officers in 2018 to 14 in 2019 and 18 in 2020. The cost of the annual salary for the unit as of December 31, 2018 was \$1,154,856. The cost in 2019 increases to \$1,753,274 and in 2020 to \$2,256,453. The cost in 2021 increases to \$2,291,113 and in 2022 is \$2,331,316. The City submits the cost of the IAFF Final Offer is \$1,834,640 in 2019, \$2,455,043 in 2020, \$2,594,494 in 2021 and \$2,183,983 in 2022, which includes salary, longevity, holiday pay, degree pay and certification pay.

The City submits that the four (4) year difference between the City's Final Offer and the IAFF's is 19.04%. In 2019, the IAFF Final Offer results in a 31.69% increase compared to the City's Final Offer that increases costs 26.07%, a difference of 5.62%. In 2020, the IAFF Final Offer results in an increase of 14.12% and the City's Final Offer increase costs 9.15%, a difference of 4.97. In 2021, the IAFF final Offer increases costs by 25.13% and the City's Final Offer increase costs 20.67%, a difference of 4.46%. In 2022, the IAFF Final Offer increases cost 5.64% and the City's Final Offer increase costs 1.65%, or a 3.99% difference.

The City submits that projecting the 19.04% increase City wide, shows the impact would be on a City with regular full-time employee earnings of \$29,453,674. Perth Amboy simply cannot afford increases of this magnitude. Thus, the City argues the Arbitrator should follow the pattern already established in the Fire Department and award the City's Final Offer.

IAFF Proposed new language

The IAFF has proposed new language regarding differentials which provides that:

The differentials between ranks shall be maintained following the expiration of the agreement.

Currently, the Agreement at Article XIII, Wages, states in relevant part that:

Except as otherwise provided in Section 8 of this Article, the straight-time base salaries of all employees covered by this agreement shall be as set forth in Schedule A.

Section 1 sets forth the negotiated across the board increases for the years 2015 through 2018, which were identical to what the rank-and-file Firefighters negotiated with the City. The resulting salaries for Captains and Battalion Chiefs after the appropriate differentials were applied are set forth on the guides.

After the rank-and-file Firefighters settled their new agreement during interest arbitration and the 1.5% increases were implemented, Local 4070 claimed it was entitled to automatic increases while they were still negotiating their new contract based on the language set forth in the Agreement. The City disagreed and the IAFF filed a grievance. Arbitrator Mastriani was appointed Arbitrator and a decision was issued on June 4, 2021 denying the grievance. Arbitrator Mastriani stated that: “[T]he Salary Guides in Local No. 4070 Agreement reflected that annual dollar salary amounts for each title and the percentage of differential that yielded the annual salary amounts. The Captain’s differential was set by a fixed but increasing percentage amount of differential off of the Senior Firefighter II title and Battalion Chief’s differential was set by a fixed but not increasing amount of percentage over the rank of Captain.” Arbitrator Mastriani rejected the IAFF’s request for automatic salary increases. He found that: “[T]he clarity of the actual salaries and differentials in the expired Agreement does not resolve the grievance dispute over whether the Agreement requires automatic increases by applying the differentials in the 2015-2108 Agreement to the newly negotiated Local No. 286 salaries pending negotiations for a new Local No. 4070 Agreement. The Agreement is silent on the disputed issue of automatic advancement. The terms of the Agreement, when read in individual parts or as a whole, has not shown to reflect the intent urged by the IAFF.” Based on these findings Arbitrator Mastriani denied the grievance.

The City asserts that since the IAFF is seeking to expand the differential between a Senior Firefighter’s salary and the Captain and Battalion Chief salary, it is even more important that automatic salary increases not be awarded. If Fire Officers’ differentials are increased, Senior Firefighters IIs will be seeking a catch up in their next round of bargaining. If they are successful and there are percentage differentials in the CNA which require automatic salary increases upon the expiration of the CNA, Fire Officers actually may receive a windfall without even negotiating. Moreover, after attaining that potential windfall, Local 4070 would still have an opportunity to seek even greater increases during its collective negotiations for a successor agreement.

Additionally, if automatic increases are awarded to Local 4070, the Police Superiors will be looking for the same language. The fact of the matter is that the City does not have the right to change salaries without negotiations and consequently the IAFF should not have the right to see its salaries increase without negotiations. It is simply bad labor relations to automatically increase salaries before negotiations even commence. The IAFF's proposed language would place the City behind the eight ball before negotiations ever begin or even encourage the IAFF to stall negotiations until after the expiration of the CNA. Given the dire economic projections we are now starting to hear every day and the potential impact on the City's ability to pay, it is not at all unlikely that the City may have to seek to reduce differentials going forward. Remember the cost of this bargaining unit increased significantly by virtue of increasing the number of Fire Superior Officers from 12 to 14 in 2019 and then to 18 in 2020. Hence, in the best interests of labor relations and fostering even-handed negotiations going forward, this language should be rejected.

Financial Impact City-wide

The City argues the financial impact of the IAFF's offer would be felt City-wide and should be analyzed as such. N.J.S.A. 34:13A-16g requires the Arbitrator to consider the "lawful authority" of the City and the impact on the parties of the Arbitrator's Award. N.J.S.A. 34:13A-16(6) specifically requires the Arbitrator to consider the financial impact of the parties' offers on the governing unit, its residents, and its taxpayers.

The City notes the Appellate Division in PBA Local 207 v. the Borough of Hillsdale, 137 N.J. 71 (1994), stated that the financial impact requirement in the statute does not equate with the municipality's ability to pay. Id. at 188. In fact, the Supreme Court stated in Hillsdale that a municipality shall not have to prove that it is not financially able to afford the PBA's Final Offer. 137 N.J. at 86. Arbitrators have recognized this fact as well. Arbitrator Barbara Zausner analyzed this issue In the Matter of Interest Arbitration between Borough of Oakland and Oakland PBA Local 164, I.A.-93-069 (1994) noting that "[T]he affordability of the respective package is not, in my view, a very weighty factor unless the more reasonable package is also the more expensive. The question of whether the Borough can afford the PBA's offer is not dispositive in this case."

The financial impact criterion requires the Arbitrator to consider how awarding the IAFF's offer will impact on the City's other employees and upon the entire budget. Even though the cost of the IAFF's offer alone will not "bankrupt" the City, the cost of the impact of the IAFF's Final Offer with regard to all of the City's other 365 employees would be overwhelming says the City. The City submits that not only will the pending negotiations with the Police Superiors be heavily impacted, but all of the City's non-IAFF employees who are below the going rate salaries will be looking for adjustments, as will the Firefighters, PBA and Teamsters to catch up in the next round of bargaining. The City's total regular earnings, excluding overtime and payments for sick incentive, uniform allowance, accrued time, etc., for year ending 2020 was \$29,453,574.32. Every additional 1% salary "catch up" increase for the City's other IAFFs and non-bargaining unit employees is almost \$300,000. Thus, in this case, they argue if the Arbitrator was hypothetically persuaded to increase the Fire Officers differential by 3% on top of the already 1.5% increase that

the Fire Officer will receive based on the Firefighter settlement in 2022 on a City-wide basis that could cost the City approximately \$1 million dollars. (1% equals \$294,000, 3% equals approximately \$1 million).

Jill Goldy, the City's CFO for 22 years, testified that in budget years 2019, 2020 and 2021 she budgeted a 1.5% across the board increase for bargaining unit employees. She also budgeted for the projected increment costs for the Firefighter and PBA units. She testified that anything above 1.5% for Local 4070 is money that was not budgeted. The City also notes that in this case there was no breakage like in the PBA case and, in fact, the bargaining unit here increased from 12 Fire Officers to 14 in 2019, and then to 18 in 2020; a 50% increase in the size of the bargaining unit. When the City budgeted to increase the Fire Officer ranks to 18, it asserts it did so believing the Fire Superior Officer salaries would only be increasing by 1.5%.

Ms. Goldy's projections set forth in the exhibits she prepared for this case were based upon her 22 years of experience of preparing and administering the City's budget. Dr. Caprio's projections were not based upon any experience regarding Perth Amboy's budget, but presumably upon his academic experience with municipal finance. Nevertheless, there is a huge difference of opinion between what Ms. Goldy believes the City can afford and what Dr. Caprio believes.

One significant reason for this difference is Dr. Caprio's projections are based upon the prior year's budget without taking into consideration that the City still has to or will have to spend against that reserved money in the current year budget. Because the City may have money left at the end of a budget year, does not mean the City can spend that money in the next budget year nor does it mean that it is surplus funds. That money may be reserved for outstanding expenditures or have restrictions on what that money can be utilized for. In other words, Dr. Caprio merely shows the amount of unspent appropriations at the end of the first budget year. Under the Local Budget Law, the amount of unspent appropriations becomes Appropriation Reserves and remain available for spending in a second year. To show that total unspent appropriations at the end of the first budget year would lapse into surplus and become available revenue is inappropriate says the City. In fact, the City argues that when a comparison is made year to year since the 2016 budget, the actual amount of lapsed appropriation reserves that went into the surplus balance is a high of 67% in 2017 to a low of only 24% in 2019 and an average of 39%. Therefore, it maintains that Ms. Goldy's estimates, which are based on her intimate knowledge of not only the City's budgets, but also of the City's financial needs and unfunded liabilities, are realistic. Dr. Caprio's projections are merely based on data, and to an extent the wrong data, and not on the insight of someone who has intimate knowledge of the City's financial status and challenges.

The Comparative Fund Balance (Surplus) Rebuilding Analysis is the most relevant of all the budgetary exhibits says the City. The analysis covers the actual budgets from CY 2017 through CY 2020, along with Ms. Goldy's "Estimate" for CY 2021. When all of the information is taken into consideration the available year end surplus is declining. In 2019 it was \$9,125,197 and in 2020 it declined to \$7,455,982, less whatever charges from 2019 are still outstanding. Another compelling fact is the line item entitled "Utilized in Succeeding Year Budget." In actual budget years 2018, 2019 and 2020, utilization of fund balance in the next year's budget actually increased

substantially from \$4,090,000 to \$4,266,000 to \$5,144,274 in 2020. If fund balance is not available to tap as a revenue in the next year's budget, the only other sources are to raise taxes or use one-time grants. The City asserts it is a basic budget principle that you do not use one-time sources of revenue to pay for on-going costs, e.g., salaries and related employment costs. Therefore, the City maintains that any award here that exceeds the 1.5% budgeted amount would be an added strain on each budget year and further depleting what the lapsed appropriations available as a revenue in the next year's budget will be says the City.

Ms. Goldy's estimate for 2021 projects an approximate \$300,000 decline in "Surplus Balance Remaining" and an approximate \$400,000 decline in 2021 "True Available Balance" suggesting the City is using too much surplus to balance its budget. The City maintains that funding any increase above what was budgeted in 2019, 2020 and 2021 for this bargaining unit and any other City employees will further deplete the City's surplus which it relies upon as a source of revenue in each succeeding budget year.

Ms. Goldy also pointed out that although in Actual CY budget there are excess Fire Prevention and UCC funds, those funds are restricted for use only for those matters and not available for salary increases or adjustments. In this analysis, Ms. Goldy explained that "Estimated CY 2021 Surplus Balance" was \$9,913,445. Dr. Caprio projected that the CY 2021 "Surplus Balance" would be \$15,250,000. After reviewing the third bullet of Dr. Caprio's report, Ms. Goldy emphatically said there is not going to be \$11 million of unspent prior year appropriation resources that will become eligible for cancellation and return to fund balance. Ms. Goldy's estimate of this amount is \$3,480,000. Ms. Goldy, who testified she is responsible for administering and preparing the budget had no idea where Dr. Caprio's projection could come from. Dr. Caprio wrote in his report that "of considerable significance is that in 2021, almost \$11 million of unspent prior year appropriation reserves will become eligible to be cancelled and returned to the Fund Balance" is inaccurate. The balance of unspent appropriations at year end continues to be used in the second year of the budget to pay expenses related to that budget year or to fund much needed reserves for current and future liabilities. One of the most recent uses of the 2020 balance was to pay retroactive pay increases to the PBA as well as the additional pension amounts based thereon. Ms. Goldy's estimation of the amount of unspent prior year appropriation reserves of \$3,480,000 is realistic and only 31% of the amount upon which Dr. Caprio places considerable significance on in his argument of ability to fund or pay.

Ms. Goldy also pointed out that she included \$500,000 in reserve for tax appeals. From 2015 to 2020, \$1,530,833 had to be refunded from tax appeals. In 2015, the City had a Reserve for Tax Appeals of \$3,868,519. As of December 31, 2020, that balance dropped to \$1,659,202.

The City notes the parties disagreed on the relevance and applicability of the federally funded American Rescue Plan Act ("ARPA") that goes into effect in 2021 and continues into 2022. On cross examination of Ms. Goldy and direct examination of Dr. Caprio, the IAFF emphasized what it portrayed as a windfall created by the ARPA funding. The City submits that when the Arbitrator studies the magnitude of the City's known liabilities, Ms. Goldy's reluctance to consider using ARPA funds on anything but Unfunded Future Liabilities is understood. The City's

unfunded liability total is almost \$1.4 billion. The Water and Sewer unfunded liability alone is \$106 million and must be addressed immediately. Ms. Goldy explained that it is unfunded liabilities like this that ARPA is intended to be used.

Ms. Goldy pointed out that the ARPA funding does not “have few restrictions and can be used to fund any retroactive liability in its entirety,” as stated by Dr. Caprio. Ms. Goldy explained that the City’s ARPA funds may be used as follows: (1) to respond to the Covid-19 public health emergency or its negative economic impacts; (2) premium pay for essential workers; (3) revenue loss with use of funds for government services that must be forward looking for costs incurred after March 3, 2021; and (4) investments in water, sewer and broadband. Beyond these specific uses, the City submits the legislation is not clear what other items these funds may be spent on. The State’s guidelines with regard to monitoring ARPA appear to be contrary to what the legislation states. The State of New Jersey Division of Local Government Services as well as the State Comptroller’s Office will have oversight as to the budget implications of the use of ARPA funds. All of this combined does not support a statement of “these resources have few restrictions” nor does it support a statement of “can be used to fund any retroactive liability in its entirety.” In fact, use of the ARPA funds for revenue loss, while allowable, would be a one-time revenue infusion that may not be sustained in future budget years and would lead to a structural deficit. The ARPA funds cannot be used in 2021 because the budget was struck before the funds became available.

Ms. Goldy showed that Covid-19 has had a significant impact on local revenues illustrated by the decline in revenues such as court, interest, fees, permits, UCC, etc. Ms. Goldy explained that the problem continues and in 2021, the City is still under collecting revenues and will not reach the projected budget revenues even though those projections were lower because by law the City could not project more than was actually collected the prior year. The net impact of under collections is that surplus will be lower. Dr. Caprio indicates that due to “improving Covid and economic environment, a conservative estimate of annual revenues for the current fiscal year suggests the amount received should exceed that amount budgeted in 2021 by a modest amount.” Ms. Goldy testified that these conditions do not exist currently and in fact, several of the budgeted miscellaneous revenues are currently under collected and are projected to be in deficit by year-end. The City claims this again points to flaws in the analysis by Dr. Caprio which is based on unrealistic assumptions likely because he does not administer the budget and his opinions are not supported by any facts. Neither Covid nor the economic environment has improved as of July 2021 for the City.

The Financial Trend Analysis shows that per capita revenue was up in 2018, down in 2019 and significantly down in 2020. The City submits that when you anticipate revenues which you cannot collect, it negatively affects the rebuilding of your fund balance. The City notes that in Dr. Caprio’s testimony and report, he repeatedly emphasized that the City had the “ability to fund” the Fire Superior Officers proposal. He premised this opinion on his surplus analysis which lapsed appropriations from 2020 into his projected 2021 surplus. The City notes that Dr. Caprio did not take into consideration that some expenses had not yet been closed out and when paid would be drawn from the money Dr. Caprio projected as surplus. Dr. Caprio’s notes that the 2021 Fund

Balance will be significantly higher than previous years but is based on flawed calculations and estimations that are not realistic says the City. The City says it is poised to have less Fund Balance at the end of 2021 than it did in the past three years with a portion that is still required to fund expenses related to the functions that generated certain revenues such as Uniform Construction Code and Fire Prevention.

The City says the second flaw in Dr. Caprio's analysis was that he relied on the City's "ability to fund." The City argues the ability to fund is not the ability to pay. The City can legally raise taxes. However, Perth Amboy is not a community that can afford to pay any more than it presently does says the City. Dr. Caprio himself pointed out that in most communities, local taxes comprise about 66% of the budget revenue. In Perth Amboy, local taxes are 74% of the budget revenue.

The IAFF pointed out that taxes have only been raised once in several years. The City claims the reality is that local taxes are a significantly greater portion of the Perth Amboy budget than the average in New Jersey, and the City already has the highest effective tax rate in the County. Raising taxes is not an option says the City in a community where the unemployment rate is 13.5%, compared to 9.8% in the State and 8.1% in the U.S.; 19% of the residents are below the poverty level; the median household income is \$36,970 below the County median, and \$29,982 below the State median; and the City's per capita income is only \$21,885, \$17,714 below the County and \$20,860 below the State. The decision to avoid tax increases is realistic management by the City government living within its means.

The City submits that Dr. Caprio's argument of ability to pay is based on mathematical calculations of revenue capacity. The City argues revenue capacity is much different than revenue ability. Revenue ability is based on the City's ability to raise the revenue, with the major source supporting its budget being the local tax levy. State aid has been flat, and in 2020 and now in 2021, local revenues were and remain diminished due to the pandemic. Other revenues are dedicated to support the functions or services that generate them. The City notes that academically, it has the potential for additional tax revenue based on mathematical calculations of the tax levy CAP under the statutory rules. The City argues it is important to note that a CAP "bank" does not relate to real dollars or money, it is theoretical. Therefore, they submit that having a CAP bank and a CAP capacity does not realistically convert to real dollars unless the CAP capacity is converted by the City into a tax increase, which is unrealistic for a heavily burdened community that does not support the ability to afford those increases.

The IAFF is arguing that in spite of all these financial hurdles, the City can afford the increased differentials it seeks because it only affects the Fire Officers. The City maintains the reality is increasing the current differentials will impact on what the City has to pay its other 365 full time employees. The additional cost on the \$29,453,574.32 regular earnings payroll in 2020 would be far beyond the City's ability to pay.

State aid has not increased over that six (6) year period while expenses have skyrocketed. Additionally, Dr. Caprio's report illustrates that Perth Amboy already has the highest tax burden

in Middlesex County. These reasons alone justify not granting Fire Officer's anything more than the 1.5% per year for four (4) years that the Firefighters agreed to in interest arbitration.

Finally, the IAFF may argue that only thirty (30%) percent of the City's residential housing units are occupied by owners so the remaining seventy (70%) percent of the occupants of these units would not be affected by a tax increase. That argument, if made, would not be correct. Owners regularly pass along tax increases to renters unless prohibited by law. There is no such law in Perth Amboy that would prohibit passing along increased owner costs. More alarming is the fact that seventy (70%) percent of Perth Amboy's residential housing units (condo, apartments, single and multi-family units) are occupied by renters because those residents cannot afford to buy their own home.

A public employer's ability to pay is unique to each community. Comparing Perth Amboy to other cities cited in the IAFF's exhibits is not fair and certainly not relevant says the City. If millions of dollars from the ARPA lapse into MRNA and the City's available fund balance becomes robust, then the IAFF may have an argument to support differential increases but now is not the time argues the City.

Comparables

The Arbitrator is required by statute to give "due weight" to those factors listed below that are judged relevant . . ." N.J.S.A. 34:13A-16(g) sets forth the eight factors that the Arbitrator must review and determine which he deems relevant. Subsection (g)(2) deals with the issue of comparability.

The City maintains that its ability to pay and comparability are the two most relevant factors. The IAFF will likely argue in its brief that the only relevant comparability factor is a comparison with other municipal fire departments. The City disagrees with the IAFF's argument. In order for another municipal fire department's terms and conditions of employment to be relevant, that municipality must be comparable to Perth Amboy in the same ability to pay; similar population; residential tax structure; working conditions; etc. If these factors are not similar to Perth Amboy, the municipality selected by the IAFF is not comparable.

This comparability analysis focuses on Middlesex County because the record includes Middlesex County financial information and Perth Amboy is located in Middlesex County. The IAFF relies on the terms and conditions of employment from Edison, New Brunswick and Woodbridge the City maintains are not comparable to Perth Amboy. Edison's ratables base is huge compared to Perth Amboy, and it is not an urban community like Perth Amboy. Its effective tax rate is much lower at 0.542 compared to Perth Amboy at 1.709. Perth Amboy's effective tax rate is more than three times greater. Edison's municipal tax burden is 25% of total property tax while Perth Amboy's is 60%. New Brunswick is the home of the State University which is the largest college campus in New Jersey. Its fire department is responsible for dormitories housing thousands of students. New Brunswick is also the home of the State's largest hospital, Robert Wood Johnson University Hospital and the thousands of employees that work there and visitors that support the local businesses. Finally, New Brunswick houses the Johnson & Johnson

Corporate offices which is a major supporter of New Brunswick. Perth Amboy has not been graced with any of these economic windfalls or fire department responsibilities. Perth Amboy's effective tax rate is 60% higher than New Brunswick. New Brunswick's municipal tax burden is 40% of total tax burden while Perth Amboy's is 60%. Woodbridge's ratable base is huge compared to Perth Amboy. Woodbridge is not an urban community like Perth Amboy. Its effective tax rate is much lower than Perth Amboy, 0.884 as compared to 1.709. Perth Amboy's effective tax rate is almost double Woodbridge's effective tax rate. Finally, Woodbridge's municipal tax burden is only 30.5% of the total property tax while Perth Amboy's is 60%. Finally, although none of the exhibits submitted into evidence regarding residents' income specifically address Edison and Woodbridge, in each case the County average is far better than Perth Amboy. in median household income, per capital money income, and persons below poverty level. This is one more factor illustrating why the only other Middlesex County municipalities cited by the IAFF are not comparable to Perth Amboy.

None of the other municipal fire departments cited by the IAFF are in Middlesex County, but the City suggests the likelihood is that those municipalities also are not comparable. The City submits that after reviewing the City's ability to pay argument, it is quite obvious why Perth Amboy is not a comparable municipality. If Perth Amboy is not a comparable municipality to those municipalities selected by the IAFF, how can those municipalities' fire departments' CNAs be given any weight for purposes of N.J.S.A. 34:13A-16(g)(2).

The City argues the only true basis of comparability that should be given weight by the Arbitrator in this case is "... public employment in the same ..." jurisdiction. N.J.S.A. 16(g)(2)(c). The City argues its ability to pay, working conditions, community, etc. are identical for all 379 Perth Amboy employees.

The City's Firefighters agreed to a four-year agreement with the City from January 1, 2019 through December 31, 2021. The salaries in 2019, after a 1.5% increase, start at \$41,289 and after 15 years cap out at \$95,065. It takes a Firefighter 15 years to reach top pay. A Captain is at the top pay immediately upon promotion. The IAFF has argued that the Fire Officers' salaries are low; so are the Firefighters because that is all the City can afford it says. The City maintains that everyone working in the Fire Department knew what the salaries were when they accepted employment with the City and the reason why salaries have been low continues. The same comparability argument the Fire Officers are making here, the Firefighters had in their negotiations and interest arbitration. Yet, during the interest arbitration, under the jurisdiction of Arbitrator Ira Cure, the firefighters settled for four (4) years at 1.5% across the board each year. That settlement set a pattern for the Fire Department argues the City.

The City submits the PBA also does not compare well with other Police Departments in the State and in Middlesex County. In fact, they submit the police compare less favorably with its peers than the firefighters do. Yet, the City notes the PBA also settled during the course of interest arbitration under the jurisdiction of Arbitrator Marc Winters. The PBA had the same financial and budgeting information as the Fire Officers have here. The PBA also had the benefit of Dr. Caprio who served as their financial consultant as he did here. Moreover, ARPA had already been passed

into law and Perth Amboy advised of its allocation. The City notes that the PBA settlement was slightly higher than the Firefighters but suggests the Police salaries were lower and will continue to be lower even after the PBA settlement. Moreover, the City submits Ms. Goldy testified there was significant breakage in the Police Department. The PBA and Firefighter settlements were the same at 1.5% for 2019 and 2020 with the police receiving 1.75% in 2021 and 2.5-% in 2022 compared to the 1.5% received by the Firefighters. During the common four years in question, the Firefighters received an average of 1.5% across the board and the Police received an average of 1.8% across the board, which the City notes was back loaded.

The City argues the most important internal comparison is between the Fire Officers and Police Superiors. When compared to the Police Superiors, the City maintains the Fire Officers compare well. To start, they submit the Fire Captain differential is 10% above the Senior Firefighter II rate, and a Fire Captain earns the 10% differential the first year he/she is promoted. However, when a police officer is promoted to Police Sergeant, the first-year differential is only 6.5% above the senior police officer rate. It then takes a Police Sergeant five (5) years to earn a differential of 10.5%.

The City submits that a comparison of Fire Officers to Police Superiors shows that at year 1, with all compensation included, a Fire Captain earns approximately \$4,000 more than a Police Sergeant at first step. When Fire Battalion Chiefs and Police Lieutenants are compared, the Battalion Chief's differential is 7.5% above the Fire Captain rate, and the Police Lieutenant differential is 10.5% above the Police Captain rate, which results in the Police Lieutenant earning approximately \$3,000 more. However, when a Police Lieutenant and Fire Battalion Chief are compared, the City submits the daily responsibilities of a Police Lieutenant in Perth Amboy are greater than a Battalion Chief.

The City asserts that Fire Officers can also earn more 'additional' compensation than a Police Superior. Under the Local 4070 Agreement, Fire Superiors are eligible to receive additional compensation for EMT and first responder certification pay, Fire Instructor pay, and Training pay. Not including longevity pay, uniform allowance, holiday pay and education pay, which the Police Superiors are also eligible to receive, a Fire Officer can earn as much as \$9,100 in additional compensation of which Police Superiors are not eligible. When the additional compensation is added to a Fire Officers base salary, Fire Officers are compensated very well when compared to Police Superiors within Perth Amboy, especially considering the difference in job responsibilities and work schedule says the City. A Fire Officer's work schedule consists of one 24 shift, followed by 72 hours off, and the Police Superiors schedule have a 4/4 schedule or 4/3 schedule. Fire Officers work either 91 or 92 days per year, and Police Superiors under the 4/4 schedule work 183 days per year, and Police Superiors under the 4/3 schedule work 208 days per year.

Like firefighters and police officers in Perth Amboy, Police Superiors' base salaries are low compared to other Middlesex County municipalities. The Police Superior CNA expired on December 31, 2018, and the City and Police Superiors are still involved in negotiations. The arbitrator must be mindful that whatever increase to the differential that is awarded to Fire Officers, the Police Superiors will seek, which is a compelling reason why the City's Final Offer should be awarded.

Finally, in order for there to be a true analysis of internal comparability, the Arbitrator is urged to closely study the "Regular Earnings Total" for all full time City employees during the period January 1, 2020 through December 31, 2020. Regular Earnings Total includes all salary related benefits, excluding for example, sick incentive, payment for accrued time, uniform allowances, and the like. Based on the Arbitrator's experience, he will likely agree that all of these salaries from Ms. Goldy, the City Administrator; statutory officers, managerial staff, supervisors and hourly employees, are low. This exhibit illustrates that in comparison to all of their peers in Perth Amboy, Public Safety and non-Public Safety, Fire Superior Officers compare very well.

Comparison of the terms and conditions of employment of Perth Amboy Fire Superiors

A. Employment in General

The City argues the Perth Amboy Fire Officers are compensated extremely well when compared to the other City of Perth Amboy residents. In Perth Amboy, according to the most recent census data, the median household income was \$52,563, and the per capita income was \$21,885. In Middlesex County, the median household income was \$89,553 and the per capita income was \$39,599. By comparison, a Captain in the Perth Amboy Fire Department can make as much as \$123,782 per year, and Battalion Chief can earn up to \$133,887 annually. Fire Superiors in Perth Amboy are earning more than their counterparts in public and private employment living in Perth Amboy. In addition, it is estimated that the unemployment rate in Perth Amboy in 2020 was 13.5%, compared to 9.8% in New Jersey. Moreover, 19% of Perth Amboy residents are living in poverty, compared to 8.5% in Middlesex County, and 9.2% in New Jersey. It is the local taxpayer, whose average earnings again was \$21,885, and of whom 19% are living in poverty, who will be paying for the IAFF's economic increase.

B. Private Employment in General

Since 2011, the national increase in salary and wages in private employment was only a total of 16.30%. In addition, from 2011 through 2018, the national private sector IAFF salary increase was a total of 16.8%. In New Jersey specifically, the private sector increase from 2011 to 2017 was 13.6%, which is an average of 1.9% per year. By comparison, Perth Amboy Fire Superiors received an 18.1% salary increase from 2011 through 2017, which was an average of 2.59% per year. Furthermore, real average hourly and weekly earnings were only up 1.1% from November 2018 to November 2019, and 0.7% from March 2019 to March 2020. Finally, the real average weekly earnings decreased 1.4 percent for year ended April 2021 and were down 2.2% from May 2020 to May 2021.

Based on these figures, Perth Amboy Fire Officers have received increases greater than employees in the private sector. Also, if one focuses on the dollar value of the percentage increases provided to Perth Amboy Fire Officers, the disparity between the increase is actually much greater in that the average employee in the United States and New Jersey is not earning between \$123,782 and \$133,887, which is the total compensation a Captain or Battalion Chief would earn in Perth Amboy.

Further, most private sector employees and other Perth Amboy employees do not receive the extra compensation that Perth Amboy Fire Officers receive. In addition to base salary, Perth Amboy Fire Officers earn extra compensation for certifications and education pay. In 2020, the average certification pay was \$4,028. Also in 2020, five (5) Fire Officers received \$750 in education pay, and two (2) received an extra \$1,250 in education pay. The wage comparison also does not take into consideration the outstanding benefits enjoyed by Perth Amboy Fire Officers. These benefits include health and dental insurance, pension, etc. Fire Officers receive benefits that cost thousands of dollars more than the health insurance provided to the average private sector employee. It is important to note that 18.7% of Perth Amboy residents under age 65 do not have health insurance.

C. Public Employment in General

The City Fire Officers have also fared better than their public sector counterparts argues the City. Public sector employees nationwide from 2011 through 2018 received a total increase to wages of 12%, whereas Fire Superior Officers received an increase of 21.3%. Over that same period of time, public sector employees throughout the United States received on average a 1.5% increase in wages per year. In New Jersey specifically, public sector employees received an average increase of 1.45% from 2011 through 2017. Fire Superior Officers in Perth Amboy have benefited from greater salary increases over that same period of time compared to public employees elsewhere.

Furthermore, Captains and Battalion Chiefs in Perth Amboy have enjoyed job security for years. Unfortunately, the same cannot be said for their public sector counterparts. For example, during January 2019, there was a threat of mass police layoffs and firefighter ‘brownouts’ in Trenton due to budget issues. During the same month in Paterson, there was a threat of layoffs that included firefighters and 112 police officers due to the city’s budget crisis. Similarly, in May 2019 in Paterson, a total of 234 Paterson school district employees faced the threat of layoff notices. In addition, 279 teachers in Jersey City received layoff notices that same month. Then, in May 2020, Governor Murphy predicted firefighter layoffs throughout New Jersey due to the COVID-19 pandemic’s impact on the New Jersey’s finances. These job cuts were contemplated in order to balance budgets. In Perth Amboy, Local 4070’s bargaining unit actually increased from twelve (12) to eighteen (18) since 2018.

Overall Compensation Package

N.J.S.A. 34:13A-16(g)(3) requires the Arbitrator to consider the “overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical hospitalization benefits, and all other economic benefits received.” The City maintains the current compensation package provided to Fire Superiors is good. The lowest paid Fire Officer is earning a total annual salary of \$113,719, and the highest paid is earning a total salary of \$133,887. Fire Officers also receive longevity benefits on top of base salary. These additional longevity benefits range from 2% of base salary after 4 years of service, to 10.5% of base salary after 24 years of service. In 2020, Fire Officer longevity payments ranged from \$2,201 to \$11,985 in additional compensation. In addition to longevity

payments, holiday pay is added to base salary. Holiday pay, ranges from \$6,592 to \$7,762. Moreover, Fire Officers receive compensation on top of longevity and holiday pay including the following: NJDOH EMT-D certification (Article XIII) \$1,000; First Responder certification (Article XIII) \$500; Uniform allowance (Article XX) \$850; Battalion Chief Incident Management Level II, Hazardous Materials On Scene Incident Command and Fire Incident Safety Officer Training (Article XXII) \$2,500; Captain Incident Management Level II, Hazardous Materials On Scene Incident Command and Fire Incident Safety Officer Training (Article XXII) \$1,500; Associates Degree (Article XXII) \$750; Bachelor's Degree (Article XXII) \$1,250; Master's Degree (Article XXII) \$1,750; State of NJ Fire Instructor Level 1 (Article XXXIX) \$1,500; and State of NJ Fire Instructor Level 2 (Article XXXIX) \$2,500.

Based on the additional income Fire Officers are eligible to earn, the City notes that sixteen (16) out of the top fifty-five (55) paid City employees are members of Local 4070. These figures also do not take into account the value of pension and health benefit coverage when a Fire Officer retires.

The City also notes that Fire Officers receive a significant amount of time off from work which makes their level of compensation even more impressive. Under the current Agreement, their time off is broken down as follows: Paid Holidays (Article XV), 16 days (equivalent of 128 hours); Vacation (Article XVI), 5.5 – 9.5 days (depending on years of service); Sick Leave (XVIII), 120 hours; Bereavement (Article XIX), Ranges from 1 day to the number of days from date of death to and including day of funeral; Personal Leave (Article XXXVIII), 24 hours. The majority of the bargaining unit works 24 hours on, and 72 hours off, consistent with the rank-and-file firefighters. Therefore, Fire Officers only work either 91 or 92 days per year, given the year, less vacation and other time off.

The City maintains that given Local 4070's generous package, it is not hard to understand why there is no turnover in the unit, except for retirements. Further, the perks provided to Local 4070 members (one of the best public pensions system available, superior medical benefits, job security, paid time-off, etc.) makes working as a Perth Amboy Fire Officer more desirable than a job in private employment even when there may be instance were the latter may provide for a higher base salary, assuming the employee has a college degree.

Cost of Living

The cost-of-living increases over the past several years have been modest. However, the City notes the salary increases for Fire Officers in Perth Amboy have consistently exceeded the increase in the cost of living for a number of years. The cost of living has remained below 2% since 2013. In November 2019, the CPI-U increased 0.1% over the month, and 1.8% over 2019. In November 2020, the CPI-U decreased 0.3% over the month, and 1.4% over the 2020. Then, as of February 2021, the CPI-U was up 1.4% over the year. From 2011 through 2018, the Fire Officer's wage increases have exceeded the increase in the consumer price index by 8.4%. Moreover, the City's Final Offer is in line with cost-of-living increases for 2019, 2020 and 2021.

Furthermore, over the past eight (8) years, the cost-of-living increase for those who receive Social Security benefits has been minimal. In 2016, Social Security recipients did not see any increase in their benefits. For 2017, Social Security recipients received a 0.3% cost-of-living increase. Then, in 2018, recipients received a 2% increase. The next year, in 2019, the Social Security cost of living adjustment was 2.8%. In 2020 however, the increase was 1.6%, followed by 1.3% in 2021. This is significant given that 24% of the population in Perth Amboy receive Social Security benefits. This means that almost one-fourth (1/4) of the City's population received an average increase of 1.3% over the past six (6) years. There is simply no reason to expect that these same residents should be expected to pay more to guarantee larger wage increases for members of Local 4070.

Thus, the City submits its Final Offer is reasonable given the CPI-U and cost-of-living adjustments over the past few years, and given the wage increase that Fire Officers have enjoyed over the CPI-U over the past eight (8) years.

Continuity and Stability of Employment

Perth Amboy Fire Officers have enjoyed continuity and stability of employment which is reflected by its strong retention. In 2018, one Fire Captain retired after 23 years of service with the Department. Six (6) of the twelve (12) Fire Officers have over twenty (20) years of service with the Department. In 2021, eleven (11) of the fourteen (14) members have had at least fifteen (15) years of service with the Department. Besides one (1) retirement, the Fire Department has not experienced Fire Officers voluntarily leaving the Department to seek employment elsewhere. In 2019, there were not any Fire Officers who left the unit, and the Department added three (3) additional Fire Officers. Similarly, in 2020 not one Fire Officer left the Department, and four (4) additional Fire Officers were added. Thus, its clear retention has been outstanding.

Unfortunately, while Perth Amboy Fire Officers are secure in their positions, this has not been the case for other employees throughout New Jersey. Again, other public and private sector employees throughout New Jersey have experienced layoffs due to budget reasons. In Paterson, public safety employees and teachers were laid off in 2019 due to a budget crisis. In the private sector in January 2019, 500 layoffs were announced across six (6) different New Jersey businesses. In October 2020, Rutgers University in Middlesex County, about 1,000 staff members were laid off or not hired back. In January 2021, William Paterson University was contemplating laying off 26% of its full-time faculty due to a \$20 million deficit. In April 2021, 1,600 additional layoffs were announced across different New Jersey businesses. These employees have clearly not benefited from the stable employment enjoyed by Fire Officers, which is even more of a reason why the City's Final Offer should be awarded. In addition, unlike Local 4070 members, many private employees have no job protection whatsoever and are, accordingly, "at will" employees. Further, layoffs in the private sector corporate world are, of course, much more common than that in the public sector.

Moreover, Perth Amboy Fire Officers have also enjoyed stable employment despite an unstable economy during the past few years. Prior to start of the COVID-19 pandemic, the United States economy was decelerating and not creating a significant number of new jobs. In 2019, the federal government experienced its longest shut down which resulted in federal government

workers being temporarily unemployed for 35-days. Perth Amboy residents have also experienced higher unemployment than the rest of New Jersey residents. In 2019 for example, the unemployment rate in Middlesex County was 3.5% and 3.6% throughout the entire state. In Perth Amboy, however, the unemployment rate in 2019 was 5.4%. Then, in 2020, 13.5% of Perth Amboy residents were unemployed, compared to 9.8% of New Jersey residents. The instability in employment is still present in New Jersey, as the unemployment rate in 2021 throughout New Jersey counties ranges from 5% to 10.1%. In June 2021 specifically, the unemployment rate in New Jersey was 7.3%. However, workers who left the labor force during the COVID-19 pandemic are not counted among the unemployed. Therefore, the actual number of unemployed residents is actually higher. Even though we are more than a year past when the COVID-19 pandemic started, a full economic recovery appears distant. Employment in February 2021 was 8.5 million less than in February 2020, a loss that could take three years to recoup.

Finally, Fire Officers will continue to enjoy generous benefits under the City's Final Offer. Fire Officers are offered a generous medical benefits package for the life of their employment, and thereafter into retirement. Furthermore, the City contributes to the State's pension system and Local 4070 members' retirement. In 2021, the City budgeted \$5,555,819 in PFRS contributions. Private sector employees have no guarantee of future retirement contributions from an employer; in fact, the Arbitrator can take judicial notice that most private sector employees' retirements are defined contribution retirements, dependent upon 401k contributions by the employee and employer, limited by IRS regulations, and subject to the stability of the stock market. As such, the City asserts Perth Amboy Fire Officers receive fantastic benefits upon retirement and can begin collecting their pension a decade or more prior to the time when private employees can begin taking distribution from their 401K (59 and a half years old currently) and even longer to receive payments from Social Security.

The City submits it has proven its case and that its Final Offer should be awarded. The City's Final Offer is fully supported by all of the statutory criteria they argue. In contrast, the IAFF's Final Offer, or even a fraction of that offer, would wreak havoc with labor and employment relations in the City. The cost of the Union's Final Offer may not appear to be overwhelming to the Arbitrator; however, it is. First of all, the City has to cover the cost of increasing the unit from twelve (12) to eighteen (18) Fire Officers. Secondly, the Police Superiors and then every other employee in the City will be looking for whatever additional adjustment Fire Officers might receive. Over the term of the last CNA, the Fire Officers differential increased by 2.5%. During the term of this CNA, the Fire Officers bargaining unit increased by 50%. Those two factions alone are reasons why the Arbitrator should follow the pattern of settlement for the Fire Department set by IAFF Local 286 Firefighters. Therefore, based upon the entire record in this matter, the City submits that the Arbitrator should award the City's Final Offer.

The IAFF's Position

Local 4070 represents a unit of Fire Officers, including the titles of Captain and Battalion Chief. The City and Local 4070 have been party to successive collective bargaining agreements, which have provided annual percentage wage increases. For example, Article XIII, Section 1 of the 2015 agreement provided the following percentage increases: 1.75% effective January 1, 2015; 2.00% effective January 1, 2016; 2.00% effective January 1, 2017; 2.25% effective January 1,

2018. However, in contrast to the prior CNA, the 2018 Agreement, added a line on the contractual salary tables for a differential between the ranks of Captain and Battalion Chief and the lower rank from 7.5% to 10% for Captains and 7.5% for Battalion Chiefs. These salary differentials increased the Fire Officers' salaries, beyond the negotiated percentage increases, starting in 2016, and expressed an intent to increase their salaries in comparison to the firefighters.

The IAFF notes that the economic terms and conditions established for Fire Officers through the parties' CNAs have traditionally lagged behind the State's other urban centers and other surrounding communities in Middlesex County. In this regard, in addition to the pay of Fire Officer lagging behind their peers in other communities, the differential between Fire Officer and Senior Firefighters is compressed compared to departments in other communities they argue.

In 2013, the City, through the Civil Service Commission, implemented changes in the titles of the incumbent Fire Captains to Battalion Fire Chief and in the titles of the incumbent Fire Lieutenants to Fire Captain, in order to satisfy the nationally recognized standards promulgated by the National Fire Protection Association (NFPA), for incident command at fire scenes. In the ensuing negotiations, the City recognized this compression in the 2015 agreement, by increasing the differential between ranks. The IAFF argues the City has abandoned this recognition in the current proceeding. At this time, salary increases in other urban departments and surrounding communities have now resulted in a continuation of the lag in the pay of City's Fire Officers, compared to those working in other communities argues the IAFF.

The IAFF maintains that the 10% differential between the ranks Fire Captain and Senior Firefighter and the 7.5% differential between Fire Captain and Battalion Chief are also below the 21% differential between the ranks of senior police officers and Lieutenants and the 10.5% differential between ranks of Police Lieutenants and Captains. The IAFF cite to the City and the PBA negotiated annual increases, effective January 1, 2019, of 1.5%, 1.5%, 1.75%, 2.5%, 2.5% and 2.5%, which exceed the economic offer for the Firefighters and the Fire Officers. The City has not concluded negotiations with the Police Superior Officers. However, they argue it is clear that the City's offer will perpetuate the status quo to the detriment of the Fire Officers.

The IAFF seeks to balance 1) the firefighters' interest in keeping pace with terms and conditions negotiated in comparable jurisdictions and with uniformed service employees in the City with 2) the City's ability to pay and the statutory criteria.

Dr. Caprio estimated that the cost of the Union's proposal, based on sixteen (16) Fire Officers, as \$1,762,852 in 2018. In 2019, the cost is \$1,901,168 a \$138,316 increase or 7.85%. In 2020 the cost is \$2,023,221 a \$122,053 increase or 6.42%. In 2021 the cost is \$2,148,443 a \$125,222 increase or 6.19%. In 2022 the cost is \$2,283,254 a \$134,811 increase or 6.27%. The IAFF notes that Dr. Caprio included the rollover of the four holidays into the increased cost of the IAFF's proposal for 2019, without deducting the loss of the contractual holiday benefit. As the rollover of the four holidays was offset by the loss of the holiday benefit for the four days, the agreed-upon rollover did not actually increase the Fire Officers' pay or the City's cost in 2019. The increase to the base would be approximately \$26,192 for the sixteen (16) Fire Officers. Adjusted for the rollover of the holidays, in each year, the cost of the Union's proposal in 2019 would be \$1,874,976 a \$112,124 increase or 6.36%. In 2020, the cost is \$1,997,029 a \$122,053

increase or 6.51%. In 2021, the cost is \$2,122,251 a \$125,222 increase or 6.27%. In 2022 the cost is \$2,257,062 a \$134,811 increase or 6.35%. Thus, the IAFF submits the annual cost of the IAFF's proposal is \$123,553 per year, with an average annual increase of 6.37%.

Continuation of Differentials

Local 4070 also seeks the addition of contract language which would protect the continuation of the rank differential following expiration of the Agreement. In contrast to the prior Agreement, the parties in their 2018 Agreement added a line on the contractual salary tables to provide for a differential between each Fire Officers' rank and the next lower rank within the Department. The IAFF's understanding was that as the salaries of Senior Firefighters increase, the salaries of Fire Officers would also increase to maintain the contractual differential set forth in the contractual salary guide. In an arbitration award, dated June 4, 2021, in PERC Docket AR-2020-524, Arbitrator James Mastriani decided that the City did not violate the Agreement by not increasing the salaries of the Fire Officers as a result of the negotiated increases for Senior Firefighters.

Arbitrator Mastriani noted the parties' intent in negotiating the differentials in the 2015 collective negotiations agreement:

[D]uring City/Local No. 4070 negotiations for the ensuing 2015-2018 Agreement, the parties engaged in specific negotiations over increases in compensation for the new Captain and Battalion Chief ranks that had replaced the Lieutenant and Captain titles. At hearing, testimony on how this issue was addressed and resolved was offered by Captain and former Local No. 4070 Secretary Brian Lopazanski, Battalion Chief and former Local No. 4070 President John Breyta and former Business Administrator Jillian Barrick. In the main, their testimony revealed common purpose between the City and the Union for the need to enhance superior officers' salaries in relation to rank and file salaries to further interest in the more senior firefighters to seek promotions and to speak to job responsibility issues arising from the impact of the title changes. Towards this end, the Local No. 4070 2015-2018 Agreement provided salary schedules for Captains and Battalion Chiefs that set specific annual salary amounts and specific percentage salary differentials between the rank of Captain and title of Senior Firefighter 2 and between the ranks of Battalion Chiefs and Captains.

In order to maintain the IAFF's intent in agreeing to the language on differentials, the IAFF proposes adding language to the salary guide on the continuation of the differential as follows:

The differentials between ranks shall be maintained following the expiration of the Agreement.

The IAFF notes that the salaries of the Senior Firefighters increased by 3.07% on January 1, 2019. 1.57% of the increase was due to an agreed-upon reduction of four paid holidays per year from the contractual holiday pay benefit and the incorporation of the four holidays into base pay. In its Final Offer, the City noted that the Fire Officers had tentatively accepted the City's change in the language of Article XV, Holiday and Holiday Pay, Section 1, which currently provides for

16 paid holidays. The IAFF accepted the City's proposal to roll the four holidays into base pay, provided the calculation of the holidays was equalized based on the higher salary rates of the Fire Officers.

In contrast to the IAFF's proposal, the City's proposal seeks to impose the City's settlement with the rank-and-file Firefighters, which provided annual percentage increases of 1.5% effective January 1, 2019; 1.5% effective January 1, 2020; 1.5% effective January 1, 2021; 1.5% effective January 1, 2022. The foregoing increases were exclusive of increment movement as Firefighters moved through eleven annual increments over their career, before reaching Senior Firefighter. The IAFF notes the proposed increases also lag behind the salary increases for rank-and-file Police Officers, whose subsequent agreement provided for annual salary increases, effective January 1, 2019, of 1.5%, 1.5%, 1.75%, 2.5%, 2.5% and 2.5%. In addition, the increases in the PBA unit excluded increment movement, as police officers moved through the contractual ten step salary guide. As testified by Dr. Caprio, correcting for breakage, the salaries of police officers increased an average of 8% annually over the life of the Agreement.

The IAFF notes that the Salary Guide, as proposed by the City, maintains the current 10% differential between the ranks of Senior Firefighter and Captain and the current 7.5% differential between the ranks of Captain and Battalion Chief. However, they argue the proposal abandons the previously expressed intent of the parties' to raise the rank differential between the Fire Officers and the Firefighters.

Dr. Caprio estimated that the cost of the City's proposal, based on sixteen (16) Fire Officers, was: \$1,812,070 in 2019, a \$57,888 or 3.30% increase; \$1,844,793 in 2020 a \$32,724 or 1.81% increase; \$1,877,508 in 2021 a \$32,715 or 1.77% increase; and \$1,915,933 a \$38,425 or 2.05% increase in 2022. Adjusting Dr. Caprio's analysis for the rollover of the holidays, in each year, the cost of the IAFF's proposal would be: \$1,785,875 a \$31,695 or 1.81% increase in 2019; \$1,818,601 a \$32,726 or 1.83% increase in 2020; \$1,851,315 or a \$32,714 or 1.80% increase in 2021; and \$1,889,740 a \$38,425 or 2.08% increase in 2022. Thus, the average annual cost of the City's proposal is \$33,890 per year. Accordingly, the cost difference between the parties' proposals is \$89,663 per year argues the IAFF.

The Interest and Welfare of the Public

The IAFF submits the Perth Amboy Fire Department is a busy and hardworking Department. The Department provides comprehensive fire and rescue services, including responding to the Port of New York/New Jersey and throughout Middlesex County. The Fire Department currently is staffed by 67 full-time firefighters consisting of 53 Firefighters, 12 Captains, 6 Battalion Chiefs and a Fire Chief. The Department responds to an average of 2,500 emergency incidents a year ranging from fires and emergency medical calls to rescue and other emergency type incidents. The Department responded to a total of 2,004 incidents in 2020 including 182 fires, of which 44 were structural fires and 7 were multiple alarm fires.

The IAFF cites a comparison of the activity of the City's fire departments in 2015 with similar and nearby departments supports the productivity of the City of Perth Amboy's Fire Department:

City	Pop.	Fires	Total Calls	Fires Per Capita
Perth Amboy	50,814	200	1,459	3.93
Asbury Park	16,116	106	1,784	6.57
Bayonne	63,024	154	2,944	2.44
Edison	99,967	356	2,728	3.56
Elizabeth	124,969	630	5,465	5.04
Linden	40,499	166	2,744	4.09
Long Branch	30,719	165	1,434	5.37
New				
Brunswick	55,181	209	2,345	3.78
Union	56,642	379	2,747	6.69
Woodbridge	19,265	89	519	4.61

In 2020 there were several notable incident responses by the Department. In 2021, the Department has continued its activity, in particular responding to major structure fires.

The IAFF notes that the responsibility for maintaining and improving the productivity, training and professionalism of the Department rests, on a day-to-day basis, with the Fire Officers. Prior to 2012, Local 4070 was comprised of Fire Lieutenants, Fire Captains and Deputy Chief. In 2012, the City and the IAFF reached agreement on the implementation of title changes in the Local 4070 unit to resolve issues over the command structure at service calls. These changes were described in the recent grievance arbitration award of Arbitrator James Mastriani:

The title changes were first negotiated by the City and Local No. 4070 in 2012 and then submitted for review and approval to the New Jersey Civil Service Commission. The details are captured in the Civil Service Commission response to a City inquiry made in 2012. ... It stated:

March 1, 2013...

Dear Mr. Fehrenbach:

This is in reference to your letter of May 8, 2012 regarding the City's request for title changes of five Fire Captains to Battalion Fire Chief, and five Fire Lieutenants to Fire Captain. By way of background, the City, along with the IAFF Fire Officers' Union, negotiated title changes for the Fire Department, with no additional pay raises, to more properly satisfy the nationally recognized standards as dictated by the National Fire Protection Association (NFPA). The City states that the aforementioned. changes would resolve insurance liability issues by adjusting the Department's organizational structure to ensure that a properly ranking incident commander will be on scene at every fire event, along with a company officer, to direct firefighting efforts pursuant

to the NFPA guidelines. The City also states that the positions of Fire Lieutenant and Deputy Fire Chief are being abolished.

The title changes had no impact on the salaries negotiated during the 2009- 2014 Local No. 4070 Agreement and it is undisputed that no additional pay raises were provided during that Agreement due to the changes in the titles. However, during City/Local No. 4070 negotiations for the ensuing 2015-2018 Agreement, the parties engaged in specific negotiations over increases in compensation for the new Captain and Battalion Chief ranks that had replaced the Lieutenant and Captain titles. At hearing, testimony on how this issue was addressed and resolved was offered by Captain and former Local No. 4070 Secretary Brian Lopazanski, Battalion Chief and former Local No. 4070 President John Breyta and former Business Administrator Jillian Barrick. In the main, their testimony reveals common purpose between the City and the Union for the need to enhance superior officers' salaries in relation to rank and file salaries to further interest in the more senior firefighters to seek promotions and to speak to job responsibility issues arising from the impact of the title changes. Towards this end, the Local No. 4070 2015-2018 Agreement provided salary schedules for Captains and Battalion Chiefs that set specific annual salary amounts and specific percentage salary differentials between the rank of Captain and title of Senior Firefighter and between the ranks of Battalion Chiefs and Captains. ...

The success of the parties' efforts to achieve enhanced supervision, while increasing staff, equipment and training, is detailed in the Fire Chief's reports. The IAFF argues that the Fire Officers employed in the Department are hardworking and productive. Despite external and internal obstacles, they submit they have worked hard in serving the residents of the City while experiencing reductions in their terms and conditions of employment. They argue the Department is clearly an essential service to the City and its residents and a key element in the continuation of the City's recovery, which should not be at risk because of the asserted fiscal challenges facing the City. The interest and welfare of the public militates in favor of Local 4070's salary proposals.

Comparables

Private Sector Comparisons

Firefighting is highly specialized skill, placing incredible stress and making great demands on the individual Fire Officers. Private employment statistics generalize over categories of employment. While there are highly specialized and unique categories of private employment, they are not comparable to the demands, physical stress or danger imposed by firefighting. Accordingly, Local 4070's position is that, rather than private sector comparisons, comparison to the labor market for Fire Officers within New Jersey is the most relevant comparison.

As reported by the Director of Conciliation and Arbitration for PERC, total private sector wages increased by 2.5% during 2018, by 2.6% during 2019, by 10.5% during 2020, a total increase of 10.7% over the four-year period. The U.S. Department of Labor indicated a Statewide 13.9% increase in the average weekly wages for the 12-month period ending December 2020 and an increase in Middlesex County average weekly wages of 12% for the same period. During the 12-month period ending March 31, 2021, the New York/Newark metropolitan area experienced a 3.1% gain in wages and salaries compared to gains of 3.0% in the Philadelphia/Camden

metropolitan area. For the 12-month period ending June 30, 2021, New York's 2.3% gain in wages and salaries compared to gains of 3.8% in Philadelphia.

The IAFF argues the increase in private sector wages, particularly when viewed against the Fire Officers' productivity and the historic differentiation in private and firefighter wage increases, supports the continued growth in the rank differential sought by Local 1040.

Public Sector Comparisons

With perhaps the exception of police work, general public sector comparisons are not applicable to firefighters, due to the nature of their work. Wages in New Jersey local government service have generally lagged behind those of firefighters and uniformed services. According to the Director of Conciliation and Arbitration, wages in local government service continued to increase by 1.8% in 2018, 2.2% in 2019 and 7.2% in 2020, for an average increase of 3.73%. With increases in the public sector generally outpacing the City's proposal, a comparison a general public sector comparison supports the IAFF's proposal.

Comparisons with Uniformed Services

The City and Local 4070 has been party to successive collective negotiation agreements. Prior to the institution of the rank differential, in 2015, wage increases. provided in the agreements lagged behind overall increases among New Jersey's uniformed services. The agreement on increases in the rank differential slowly started to reverse the historic trend. The foregoing trend, however, will resume under the City's proposal, which abandons the mutual intent to increase the rank differential, as wages continue to lag behind overall increases among New Jersey's uniformed services. The Union's proposal continues the pattern started under the 2015 Agreement of reducing the disparity between Fire Officers in Perth Amboy and those in other similar and surrounding communities, by increasing the rank differential within the Department.

Internal Comparison with Firefighters Unit

The IAFF submits that normally the most appropriate comparison for the City's Fire Officers would be the recent settlement of the contract dispute for the Firefighter's unit between the City and International Union of Fire Fighters Local 286, covering the period from January 1, 2019 to December 31, 2022. The latest settlement provided for annual salary increases of 1.5%. However, the IAFF notes that as firefighters progress across the 10-step salary guide, the increases in salary increments eclipse the percentage increases and increases in longevity. In contrast, in the absence of step increments, the Fire Officers' compensation is limited to the differential and increases in longevity. While the overall impact is to reduce the cost to the City of firefighters moving through the steps, the increases in increments remain a cost to the City and a source of increased income to the firefighters.

The IAFF notes that between 2009 and 2013, the agreements between the Fire Officers and Firefighters moved in tandem. In 2014, the Fire Officers received a 2% increase, while the Firefighters had a wage freeze. As a result of the settlement in the Firefighters' unit, the Senior Fire fighter's salary is currently \$95,065, resulting in a reduced rank differential between the Senior Firefighters and Captains of 6.80% and a reduced rank differential of 15.44% between Senior Firefighters and Battalion Chiefs.

The percentage wage increases set forth in the 2018 Fire Officers Local 4070 Agreement are the same as the Firefighters Local 286 increases. The distinction is that the agreed upon-salary differentials on the Fire Officers Salary Guide resulted in salary increases above those of the Firefighters Agreement. Thus, by 2015, the increasing rank differential became the dominant factor in the setting of the Fire Officers' salary levels.

The City's proposal seeks a return to the pre-2014 pattern, which had resulted in stagnating salary levels. Based on the foregoing, the Firefighters' settlement should not be regarded as an appropriate pattern in the instant case.

Internal Comparison with Police Superior Officers

The IAFF submits that an appropriate comparison for the City's Fire Officers is the City's Agreement with the Perth Amboy Superior Officers Association, Fraternal Order of Police, Lodge #80 which expired on December 31, 2018, and remains open. The FOP negotiations unit includes the titles Sergeant, Lieutenant, and Captain. The Agreement, at Schedule A, Salary Guide, provides 10.5% differentials between the ranks of 1) senior police officer and senior sergeant, 2) senior sergeant and lieutenant, and 3) lieutenant and captain:

	Differential	1/1/2015	1/1/2016	1/1/2017	1/1/2018
Sergeant 5	10.5%	\$101,580	\$102,972	\$104,364	\$105,757
Lieutenant	10.5%	\$112,246	\$113,784	\$115,323	\$116,861
Captain	10.5%	\$124,032	\$125,732	\$127,432	\$129,132

With the exception of increasing the number of steps to the top Sergeant's pay, the rank differentials are consistent with the prior salary schedule, included in the FOP's 2009 to 2014 agreement.

Based on the Civil Service job descriptions, the ranks of Police Lieutenant and Fire Captain describe primary level supervisors who are in charge of a fire company or platoon of police officers:

POLICE LIEUTENANT: DEFINITION: Under supervision of a Police Captain during an assigned tour of duty, has charge of a police platoon or performs specialized supervisory police duties; does related work as required.

FIRE CAPTAIN: DEFINITION: Under direction, has charge of a fire department company intended to assist in the extinguishing of fires; does other related duties.

The IAFF argues that given the similarities in the duties of the two positions, the rank differentials between Police Officers and Police Lieutenants and between Firefighters and Fire Captains would be expected to be the same. However, Police Lieutenants are paid a 21% rank differential, while Fire Captains are paid a rank differential of 10%. Even the position of Police Sergeant, which has less responsibility, earns a higher 10.5% rank differential than Fire Captains.

The Civil Service job descriptions for the ranks of Police Captain and Battalion Chief describe secondary level supervisors who are in charge of multiple fire companies or platoons of police officers:

POLICE CAPTAIN: DEFINITION: Under supervision of the Chief or Deputy Chief of Police during an assigned tour of duty, has charge of subordinates engaged in activities intended to provide assistance and protection for persons, safeguard property, assure observance of the laws, and apprehend lawbreakers; does related work as required.

BATTALION FIRE CHIEF: DEFINITION: Under direction of the Fire Chief or a Deputy Fire Chief, assists in the management and discipline of the municipal uniformed fire department by supervising a group of fire companies engaged in providing fire protection for persons and property; does other related duties.

The IAFF submits that given the similarities in the duties and responsibilities of the two positions, the rank differentials between Police Lieutenants and Fire Captains and between Police Captains and Battalion Chiefs would be expected to be the same. However, there is a compressed rank differential for Fire Officers compared to Police Superior Officer salaries.

The IAFF argues that under the City's offer, the disparity between Police Superior Officers and the Fire Officers will be exacerbated by the PBA settlement, which exceeded the City's offer to the Fire Officers. While the City is offering 6% over four years to the Fire Officers, the City's settlement with the PBA provided for increases of 7.25% over the same four years and an additional 5% over the last two years of the PBA Agreement. The IAFF submits the cost of increments under the PBA Agreement, similar in structure to the Firefighters Agreement, eclipses both the cost to the City and the salary increases for rank-and-file police officers. Dr. Caprio costed the PBA settlement as averaging 6.17% over the life of the agreement. In 2020, the cost with replacement was \$6,623,986 a \$166,821 decrease in increment cost due to breakage. In 2021, the cost with replacement was \$7,222,417 with the increment cost of \$598,431. In 2022, the cost with replacement was \$7,794,081 with the increment cost of \$571,664. In 2023, the cost with replacement was \$8,401,874 with the increment cost of \$607,793. According to Dr. Caprio, the average increase under the PBA Agreement from 2021 to 2024 is 8.3%. The IAFF argues the average increase in costs and benefits in the PBA unit compares favorably to the 6.37% average annual increase proposed by the IAFF for the Fire Officers.

Comparisons with Fire Departments

The IAFF argues terms and conditions established through the parties' Agreement lag behind the term and conditions of employment in the State's urban centers and in surrounding communities: Asbury Park, Edison, Elizabeth, Linden, Long Branch, New Brunswick, Union Township and Woodbridge, many of which assert similar systemic fiscal problems. In addition to the pay of Fire Officers lagging behind their peers in other communities, the IAFF maintains that the differential between Fire Officers and Senior Firefighters is compressed in the Perth Amboy Fire Department compared to departments in other communities:

City	Year	FF	Lt/Capt- Primary			BC/DC- Secondary		
			Supervisor	\$ Diff	% Diff	Supervisor	\$ Diff	% Diff
Perth Amboy	2018	\$92,241	\$101,526	\$9,285	10.07%	\$109,740	\$17,499	18.97%
Asbury Park	2017	\$97,258	\$112,750	\$15,492	15.93%	\$125,691	\$28,433	29.23%
Edison	2021	\$125,147	\$144,908	\$19,761	15.79%	\$163,141	\$37,994	30.36%
Elizabeth	2017	\$99,373	\$126,710	\$27,337	27.51%	\$149,235	\$49,862	50.18%
Linden	2019	\$106,783	\$121,065	\$14,282	13.37%	\$134,604	\$27,821	26.05%
Long Branch	2019	\$121,382	\$135,234	\$13,852	11.41%	\$150,748	\$29,366	24.19%
New Brunswick	2018	\$99,398	\$129,063	\$29,665	29.84%	\$145,694	\$46,296	46.58%
Union Township	2020	\$107,284	\$134,261	\$26,977	25.15%	\$145,947	\$38,663	36.04%
Woodbridge								
District 1	2021	\$110,906	\$121,442	\$10,536	9.50%	\$131,424	\$20,518	18.50%

In nearby Edison, Fire Captains are paid \$43,382 more than Fire Captains in Perth Amboy and Battalion Chiefs are paid \$53,401 more. In addition, the rank differentials are 15.79% for Captains in Edison and 30.36% for Battalion Chiefs. Similarly, in New Brunswick, Middlesex County's other urban center, Fire Captains were paid \$27,537 more than in Perth Amboy, in 2018, and Battalion Chiefs were paid \$35,954 more. In addition, the rank differentials for New Brunswick were 29.84% for Captains and 46.5% for Battalion Chiefs. In neighboring Woodbridge, while the rank differentials are similar, Fire Captains are paid \$19,916 and Battalion Chiefs are paid \$21,684 more than their peers in Perth Amboy. Similar differentials were present for communities in neighboring counties says the IAFF.

The IAFF notes that Dr. Caprio presented a comprehensive statistical analysis of the salaries paid to Firefighters and Fire Officers working in departments with between 30 and 110 firefighters. Dr. Caprio's analysis used the salary paid to the 75th percentile as a surrogate for Senior Firefighters, the 85th percentile as a surrogate for Fire Captains, and the 95th percentile for Battalion Chiefs. Of the 38 departments analyzed, Perth Amboy was among the lowest paid, averaging salaries of \$13,000 to \$19,000 less than other departments.

The IAFF submits the parties in the 2015 negotiations recognized that the continuation of the low salaries and compressed differentials for Fire Officers was detrimental to morale and productivity and they took action to accomplish change. As noted by Arbitrator Mastriani:

At hearing, testimony on how this issue was addressed and resolved was offered by Captain and former Local No. 4070 Secretary Brian Lopazanski, Battalion Chief and former Local No. 4070 President John Breyta and former Business Administrator Jillian Barrick. In the main, their testimony reveals common purpose between the City and the Union for the need to enhance superior officers' salaries in relation to rank and file salaries to further interest in the more senior firefighters to seek promotions and to speak to job responsibility issues arising from the impact of the title changes. Towards this end, the Local No. 4070 2015-2018 Agreement provided salary schedules for Captains and Battalion Chiefs that set specific annual salary amounts and specific percentage salary differentials between the rank of Captain and title of Senior Firefighter and between the ranks of Battalion Chiefs and Captains. ...

The IAFF argues it is evident that the City has abandoned this “common purpose” in proposing substandard salary increases, which will perpetuate the disparity between Perth Amboy and surrounding and similar communities.

Acceptance of the City’s proposals would result in Perth Amboy Fire Officers being the lowest paid of the similar and surrounding departments, despite their productivity and training. The increase in the salary differential proposed by Local 4070 is consistent with the parties’ common purpose and with the comparison of salaries in surrounding and similar fire departments.

Cost of Living

The cost of living has increased since the expiration of the parties’ agreement. In the New York/ Newark area, the CPI increased 1.7% during the 12 months ending June 31, 2019, and 1.3% during the 12 months ending June 31, 2020. However, during the most recent 12 months ending June 30, 2021, the CPI increased 4.1%. According to the U.S. Bureau of Labor Statistics:

Prices in the New York-Newark-Jersey City area, as measured by the Consumer Price Index for All Urban Consumers (CPI-U), rose 1.0 percent in June, following increases of 0.5 percent in May and 0.7 percent in April, the U.S. Bureau of Labor Statistics reported today. Chief Regional Economist Martin Kohli noted that the advance was influenced by higher prices for all items less food and energy. ...

Over-the-year, the CPI-U rose 4.1 percent. ...June marked the first month since October 2008 that the 12-month percent increase exceeded 4.0 percent. Energy prices climbed 16.8 percent, largely the result of an increase in the price of gasoline. Food prices increased 1.8 percent. The index for all items less food and energy rose 3.7 percent.

On July 13, 2021, BLS reported that for the entire Northeast Region the CPI-U had advanced 4.6 percent, over the last 12 months. Thus, while the cost-of-living increases were initially consistent with the City’s proposal, the current increases in the CPI support Local 4070’s proposal.

Lawful Authority of the Employer

Perth Amboy’s current tax levy is almost \$2 million under the Property Tax Levy Cap. In addition, the City also has more than \$ 5.0 million of unused revenue capacity in its Cap Bank. Accordingly, the Local’s proposal does not implicate the lawful authority of the City under the Property Tax Levy Cap law.

Ability to Pay

The IAFF notes that the City relies almost exclusively on its asserted fiscal constraints to justify its rejection of the proposal by Local 4070. In considering the offers of the parties, the IAFF submits the City’s finances are not determinative citing the Supreme Court in Irvington P.B.A. v Town of Irvington, 80 N.J. 271 (1979).

The IAFF argues that based on Dr. Caprio’s “Basic Ability to Pay Analysis”, the difference between the two proposals is approximately \$358,649 over the life of the contract, an average of \$89.663 per year. The IAFF maintains that based on the City’s budget, fund balance, annual increase in assessed valuation, available tax cap levy, excess budgeted resources for the last 5 years

and Federal Grants under the American Recovery Plan (“ARPA”) there is no statutory restriction or inability by the City to fund the IAFFS's wage proposal. As of December 31, 2020, the City had budgeted revenues of \$118,642,980 and had collected revenues of \$120,194,995. The increased cost of the IAFF’s proposal represents a minimal portion of the City’s revenue. The IAFF notes that the City apparently has had no difficulty in budgeting for the cost of PBA settlement out of its surplus revenues, even though the costs will average 4% to 6% a year over budget.

The IAFF argues that a review of the City’s finances indicates that the City’s revenues were ahead of expenditures in each of the last five years. The City has generated a surplus balance of anywhere from \$7,995,373 to \$11,040,506 each year since 2017, with a conservative estimate by the City’s CFO, Ms. Goldy, of a surplus balance of \$9,913,445 in 2021. The City has been able to utilize \$4 million to \$5 million annually in surplus budgets in succeeding budgets, leaving the City with annual remaining surplus balances of \$2.8 million to \$6.7 million each year. As noted by Dr. Caprio, between 2016 and 2020 Perth Amboy spent an average of only 91.6% of its total amount of appropriations, representing an average “reserved” resource of more than \$6.6 million. The cost of the Union’s proposal represents a minimal amount of the City’s annual surplus.

The IAFF submits the testimony of Ms. Goldy indicated that some revenue sources had declined due to the Covid Pandemic. However, the IAFF argues the City will be receiving ARPA resources in two tranches totaling approximately \$16,900,000, or about \$8.45 million in each of 2021 and 2022. While the grants are not unlimited, they can be used to respond to the COVID-19 public health emergency with respect to COVID-19 or its negative economic impacts. In particular, funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, including first responders, to the extent that the employee’s time that is dedicated to responding to the COVID-19 public health emergency. The IAFF notes that Ms. Goldy did not even account for the potential use of the ARPA Funds in her report and analysis. Despite the absence of any acknowledgement of the ARPA Funds, the allocation of these funds to cover allowable expenses of the City clearly would free up funds to be re-allocated for the cost of the IAFF’s proposals. With ARPA funds of \$16,900,000, the City should be able to free up previously budgeted funds, or even surplus funds, to cover the cost of the IAFF’s proposal of approximately \$358,649 over the life of the contract asserts the IAFF.

The IAFF argues the City has made a policy decision not to raise taxes to increase revenues. As noted by Dr. Caprio, between 2019 and 2021, Perth Amboy had an additional \$10,758,028 of tax revenue capacity that it chose not to use. In this regard, property tax increases have been well below the statutory CAP, averaging 1% annually from 2016 through 2021. Perth Amboy’s 2021 municipal property tax cap stood at \$60.222 million, while setting the levy at only \$58.64 million, leaving additional tax revenue potential of \$1.91 million, more than sufficient to sustain the IAFF request. According to Dr. Caprio, the IAFF’s proposed increase of \$130,000 per year would result in the average annual impact per homeowner is \$9.94. However, as noted previously, the use of surplus balances and the award of ARPA funds are more than sufficient to fund the cost of the IAFF’s proposal, without any increase in taxes says the IAFF. The IAFF argues the City clearly has the ability to pay the costs of the IAFF’s proposal without negative impact on the community.

The IAFF maintains that given the taxing and spending authority of the City and Federal ARPA funds of \$16,900,000 over the next two years, the City has the authority and the ability to fund the IAFF’s proposal, without any detrimental impact on the City and its taxpayers.

Continuity and Stability of Employment

The IAFF argues the City had previously embraced a common purpose “for the need to enhance superior officers’ salaries in relation to rank and file salaries to further interest in the more senior firefighters to seek promotions and to speak to job responsibility issues arising from the impact of the title changes.” The City, in 2012 and 2013, had adjusted the Department’s organizational structure “to ensure that a properly ranking incident commander will be on scene at every fire event, along with a company officer, to direct firefighting efforts pursuant to the NFPA guidelines.” The Fire Officers have responded productively ensuring the Department’s continued growth and success.

As noted previously, the IAFF claims the salaries and rank differentials earned by the Fire Officers lag behind their peers in urban centers and surrounding communities, including the police superior officers employed by the City. In the 2015 negotiations, the parties recognized that the lagging salaries would operate to dissuade senior firefighters from assuming enhanced responsibilities without a meaningful increase in pay. Recognizing the City’s asserted financial issues and that the disparity in pay could not be fixed in one shot, the parties agreed upon an increase in the rank differential over the life of the 2015- 2018 Agreement.

The City’s proposal, which the IAFF suggests would result in a stagnation in salaries, abandons the parties’ common purpose and is contrary to the continuity and stability of employment in the ranks of the Fire Officers. The statutory criteria of continuity and stability of employment militates against stagnation, in light of the availability of funding to eliminate the disparity in salary levels. Perth Amboy has recruited a skilled and productive workforce. The members of Local 4070 have given the City long and valued service and have been loyal and productive employees. The continuity and stability of the employment of the Fire Officers should not be risked achieving temporary cost savings at the expense of its employees.

STATUTORY CRITERIA

A. The Arbitrator’s Authority

Public employers and Public Safety Associations are statutorily mandated to resolve their labor disputes pursuant to the Police and Fire Interest Arbitration Reform Act, N.J.S.A. 34:13A-16 (the “Act”). By enacting the Act, the Legislature recognized the unique and essential duties police officers and firefighters perform and the life-threatening dangers they face. The purpose of the interest arbitration procedure is to promote and protect the well-being of New Jersey citizens, the efficient operation of police and fire departments as well as the high morale of employees that perform this important work.

B. Statutory Criteria

In rendering an award, the Arbitrator must consider the following nine (9) factors:

1. The interest and welfare of the public.

2. Comparison of wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with 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 as determined in accordance with section 5 of P.L. 1995, c. 425 (C. 34:13A-16.2)
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. The stipulation of the parties;
5. The lawful authority of the employer;
6. The financial impact on the governing unit, its residents and taxpayers;
7. The cost of living;
8. The continuity and stability of employment, including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of negotiations and collective bargaining between the parties in the public service and in private employment;
9. Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c.62 (C. 40A:4-45.45).

The Arbitrator must render an award based on the evidence on the record considering the statutory criteria set forth above. The opinion and award must clearly address the criteria. It must include a discussion of the evidence as it relates to the statutory criteria, the weight accorded to each criterion and the reason for the decision. The opinion and award must also explain whether any of the criteria were deemed to be irrelevant and why.

This Award will be issued under concept of "conventional authority" pursuant to N.J.S.A. 34:13A-16d; and, N.J.A.C. 19:16-5.7(e). Under conventional authority, an arbitrator's award is not

limited by either party's final offer. Rather, the arbitrator has the power to select from either party's last offer or, alternatively, the arbitrator may use his or her judgment 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 IAFF Local 232*, Docket No. IA-96-178 (July 28, 1997) (Arbitrator did not err by establishing third year salary for City prosecutor investigators which was lower than the employer's offer).

N.J.S.A. 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of justifying the proposed change. The burden must be met by sufficient evidentiary support. No proposed issue can be deemed presumptively valid in the absence of justification that is supported by credible evidence. Indeed, labor stability is partly conditioned upon the parties consistency in the application and implementation of terms and conditions of employment as set forth in the parties' agreement. For this reason, changes in terms and condition of employment should not be awarded lightly. Moreover, any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. A decision on an individual issue will include consideration of the reasonableness of awarding that issue in relation to the overall terms of the award. Indeed, while there may be merit to awarding or denying a single issue if it were to stand alone; a different conclusion is reached when considered within the context of the entire award. I am also required by statute to determine the total net annual economic cost of the terms required by the award.

ANALYSIS AND AWARD

The parties have submitted extensive documentation and comprehensive position statements addressing the statutory criteria which I have reviewed and considered under the 16(g) criteria. The issue in dispute is economic and is over salaries and wages. Specifically, the issue is over the salary differential received by a Fire Captain from a Senior Firefighter and a Battalion Chief from a Fire Captain.

The parties were represented by extremely competent and zealous advocates. The exhibits were well organized and relevant and the testimony of the witnesses was credible. After review of the Final Offers, evidence and arguments, the Interest Arbitration Award in this proceeding is analyzed and discussed below. The sole issue presented is the salary differential paid to Fire Officers in the ranks of Captain and Battalion Chief.

The interest and welfare of the public has been given the most weight in this Award. Significant weight was also given to the comparison of Fire Officers salary and benefits to the City's other uniformed employees as well as comparable Fire Officer salaries and differentials from other jurisdictions. Great weight has also been applied to the lawful authority of the employer and financial impact criteria. I have given lesser weight to the cost-of-living criterion, private sector wage increases and PERC settlement statistics.

The City seeks to apply the salary increases agreed to with the Firefighters of 1.5% in 2019, 1.5% in 2020, 1.5% in 2021 and 1.5% in 2022 to the existing 10% differential paid to the Fire Captains and 7.5% differential paid to the Battalion Chiefs. The IAFF seeks Captain differential increases of 13.75% in 2019, 17.5% in 2020, 21.25% in 2021, and 25% in 2022. The IAFF seeks Battalion Chief differential increases of 26% in 2019, 34% in 2020, 42% in 2021 and 50% in 2022. The Final Offers are compared below:

	<u>Firefighter</u>	<u>Captain</u>	<u>Battalion Chief</u>
2018	\$92,241	\$101,526	\$109,740
2019	\$95,065		
IAFF		\$108,136	\$119,782
City		<u>\$104,572</u>	<u>\$112,415</u>
Difference		\$ 3,564	\$ 7,367
2020		\$96,491	
IAFF		\$113,377	\$129,298
City		<u>\$106,140</u>	<u>\$114,101</u>
Difference		\$ 7,237	\$ 15,197
2021		\$97,938	
IAFF		\$118,750	\$139,072
City		<u>\$107,732</u>	<u>\$115,812</u>
Difference		\$ 11,018	\$ 23,260
2022		\$99,407	
IAFF		\$124,259	\$149,111
City		<u>\$109,348</u>	<u>\$117,549</u>
Difference		\$ 14,911	\$ 31,562
Cumulative Difference		\$ 36,730 per Captain	\$ 77,386 per Battalion Chief

After review of the parties Final Offers, the numerous exhibits and passionate arguments and submissions on Salaries, I find the City did not meet its burden to justify its inability to pay any increase in the differential based on the potential City-wide impact nor did the IAFF justify its demand for significant increases in the differentials paid to Fire Captains and Battalion Chiefs based on comparability with the Police Superiors and other fire departments.

This unit is distinct and unique from the City's other bargaining units due to the title and operational changes implemented in the command-and-control structure. As noted by Arbitrator Mastriani in the recent grievance arbitration award over the continuation of the payment of the salary differential, the parties in the 2015 negotiations recognized that the continuation of the low salaries and compressed differentials for Fire Officers was detrimental to morale and productivity. He noted "the parties' common purpose to enhance superior officers' salaries in relation to rank and file salaries to further interest in the more senior firefighters to seek promotions and to speak to job responsibility issues arising from the impact of the title changes."

More Senior Firefighters have sought promotion since 2018 with three (3) promoted in December 2018/January 1, 2019, and four (4) in September 2020. I find that based on this record, the common purpose to enhance Fire Officer salaries as a result of the title and organizational changes, salary compression, and to enhance productivity, morale, and to speak to the job responsibility issues arising from the changes on the command-and-control structure of the Fire Department continues through this contract term. Thus, a modest increase in the Fire Officers differential is warranted during term of this Agreement. The increase shall be backloaded to reflect the City's budget concerns.

Based on the evidence in the record and the application of the 16g criteria, an increase in the Fire Officers differential during the term of this Agreement is warranted. That said, the addition of language to continue the differential after expiration of this Agreement has not been shown to be warranted to be awarded and instead should be based on the facts and evidence at the time. Therefore, the additional language sought by the IAFF is not awarded.

Accordingly, I award the following:

The following SALARY GUIDE is based on the below annual increases to the Senior Firefighter salaries:

- i. 2019 - 1.5% 95,065
- ii. 2020 - 1.5% 96,491
- iii. 2021 - 1.5% 97,938
- iv. 2022 - 1.5% 99,407

SALARY GUIDE

		1/1/19	1/1/20	1/1/21	1/1/22
	Diff. to Sr. FF	10%	10%	11.25%	12.5%
Captain		\$ 104,572	\$ 106,140	\$ 108,956	\$ 111,832
		1/1/19	1/1/20	1/1/21	1/1/22
		7.5%	7.5%	7.5%	7.5%
Battalion Chief	Diff. to Capt.	\$ 112,415	\$ 114,101	\$ 117,127	\$ 120,219

The total cost of salary for the Fire Officers at December 31, 2018 was \$1,154,856 comprised of five (5) Battalion Chiefs at \$109,140 and six (6) Captains at \$101,526. As a result of the application of the 2019 1.5% salary increase to a Senior Firefighter II, in 2019 the total cost of salary increases to the Fire Officers is \$1,511,066 comprised of six (6) Battalion Chiefs at \$112,415 and eight (8) Captains at \$104,572. In 2020, the total cost of the Fire Officer salary increases to \$1,639,866 comprised of six (6) Battalion Chiefs at \$114,101, eight (8) Captains at \$106,140 and four (4) Captains promoted September 30th at \$26,535. In 2021, the total cost of salary increases to \$2,010,234 comprised of six (6) Battalion Chiefs at \$117,127 and twelve (12) Captains at

\$108,956. In 2022, the total cost of salary increases to \$2,063,298 comprised of six (6) Battalion Chiefs at \$120,219 and twelve (12) Captains at \$111,832.

The four (4) year increase in the salary totals 8.5% or 2.125% per year. The Captains will earn \$10,306 over the four (4) years or \$2,576 per year. The Battalion Chiefs will earn \$11,079 over the four (4) years or \$2,769 per year. The total cost of the salary Award over the four (4) year term is \$908,442 or \$227,110 per year. The total cost of the City Final Offer over the four (4) year term is \$862,614, or \$215,653 per year. The cost of salary difference in the Award and the City Final Offer in 2021 is \$22,578 and in 2022 is \$45,828.

The Interest and Welfare of the Public, N.J.S.A. 34:13A-16g(1)

The Interest and Welfare of the Public criteria is the most significant of all statutory factors to be considered and an Arbitrator must give due weight to the interest and welfare of the public when issuing an award. It is a criterion that includes the financial impact of the awarded increases and the desirability of maintaining employee morale for the City's firefighters. Indeed, the criteria recognizes the interest of the public in knowing that its fire department is staffed by competent, dedicated personnel possessing good working morale, and the interest of the public in avoiding higher taxes and/or diminished services.

As Arbitrator 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." *See also* City of Seaside Park and IAFF Local 182, IA-2012-022 (April 9, 2012) ("The interest and welfare of the public is not only a factor to be considered, it is the factor to which the most weight must be given."). "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." *See* Sayreville and IAFF Local 98, IA 2006-047 (November 5, 2008).

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. "Indeed, the Arbitration Act expressly requires the arbitrator to consider the public interest and public welfare." *Id.* "An award that ignores the interests and welfare of the public or subordinates these interests to other considerations would tend to undermine the intent and purpose of the Act itself." City of West Windsor, Docket No. IA-2019-014, June 20, 2019. In the Appellate Division's decision in the Hillsdale matter, 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.* Arbitrators historically understood this criterion as requiring that public safety employees be well

compensated. However, the Appellate Division directed that this criterion 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.

The City maintains its Final Offer is in the interest and welfare of the public and any increase as sought by the IAFF would have a devastating City wide impact. The City maintains that even though the cost of the IAFF’s offer alone will not “bankrupt” the City, the cost of the impact of the IAFF’s Final Offer with regard to all of the City’s other 365 employees would be overwhelming.

The IAFF submits the Perth Amboy Fire Department is a busy and hardworking Department. The Department responds to an average of 2,500 emergency incidents a year ranging from fires and emergency medical calls to rescue and other emergency type incidents. The responsibility for maintaining and improving the productivity, training and professionalism of the Department rests, on a day-to-day basis, with the Fire Officers. There is no doubt that the Fire Officers employed in the Department are hardworking and productive. The Department is clearly an essential service to the City and its residents and a key element in the continuation of the City’s recovery, which should not be at risk because of the asserted fiscal challenges facing the City.

The interest and welfare of the public requires a well-trained, educated and professional Fire Department with good morale. This bargaining unit is unique and distinct from the City other bargaining units, including the Police Superiors, due to the title and operational changes implemented in 2014. The City and IAFF negotiated title changes for the Fire Department, with no additional pay raises, to satisfy the nationally recognized standards more properly as dictated by the National Fire Protection Association. The title changes adjusted the Department’s organizational structure to ensure that a properly ranking incident commander will be on scene at every fire event, along with a company officer, to direct firefighting efforts pursuant to the NFPA guidelines. The City and IAFF’s articulated common purpose “for the need to enhance superior officers’ salaries in relation to rank and file salaries to further interest in the more senior firefighters to seek promotions and to speak to job responsibility issues arising from the impact of the title changes” is still relevant during the term of the proposed new agreement.

The City budgeted for bargaining unit increases of 1.5% per year in 2019, 2020 and 2021. The City settled with the Firefighters for 1.5% in 2019, 1.5% in 2020, 1.5% in 2021 and 1.5% in 2022 per year plus the cost of step increments. The salaries awarded herein to the Fire Officers are consistent with the salary increases to the Firefighters and the budgeted pattern for the Fire Department. The increases in the differential for the Fire Officers is unique to address the job responsibility issues arising from the impact of the Department operational changes as set forth in the 2018 Agreement and as noted by Arbitrator Mastriani. The increases in the differential are backloaded (like the contract with the Police) to account for the City’s budgetary process and issues. The cost of salary difference in the Award and the City Final Offer in 2021 is \$22,578 and in 2022 is \$45,828 and will not impact the City’s ability to pay nor should it be perceived to have a City-wide impact because of the unique and distinct issues facing this unit. The interest and welfare of the public requires a well-trained, educated and professional Fire Department with good morale that this Award balances with the expense borne by the City and its taxpayers.

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The City settled with the PBA for 1.5% in 2019, 1.5% in 2020, 1.75% in 2021 and 2.5% in 2022, 2.5% in 2023 and 2.5% in 2023 per year plus the cost of step increments. The City cited breakage within the Police Department to account for the wage package. The City used a portion of the 2020 fund balance to pay retroactive pay increases to the PBA.

The City has generated a surplus balance of anywhere from \$7,995,373 to \$11,040,506 each year since 2017, with a conservative estimate of a surplus balance of \$9,913,445 in 2021. The City has been able to utilize \$4 million to \$5 million annually in surplus budgets in succeeding budgets, leaving the City with annual remaining surplus balances of \$2.8 million to \$6.7 million each year. In fact, the City utilized surplus funds in 2020 to pay for the PBA contract settlement.

In addition, the City will be receiving ARPA resources totaling approximately \$16,900,000, or about \$8.45 million in each of 2021 and 2022. While the ARPA funds are not unrestricted, they can be used to respond to the COVID-19 public health emergency with respect to COVID-19 or its negative economic impacts. The funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, including first responders, to the extent that the employee's time that is dedicated to responding to the COVID-19 public health emergency. The allocation of these funds to cover allowable expenses of the City, or surplus funds, would free up funds to be re-allocated to offset the cost of the Award.

While the interest and welfare of the public supports the increase in the differential, the addition of language extending the salary differential beyond the expiration of the agreement is not and should be evaluated based on the evidence at that time. Since the Award increases the differential between a Senior Firefighter's salary and the Captains and Battalion Chiefs' salary, the automatic extension of the salary differentials should be negotiated. The City does not have the right to change salaries without negotiations and likewise the IAFF should not see its salaries increase without negotiations. In the best interests and welfare of the public and labor relations the additional language is not awarded.

Comparability 16g (2)

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of C.34:13A-16.; provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

Employment in General

Perth Amboy Fire Officers are compensated well when compared to the other City of Perth Amboy residents. In Perth Amboy, according to the most recent census data, the median household income was \$52,563, and the per capita income was \$21,885. In Middlesex County, the median household income was \$89,553 and the per capita income was \$39,599. By comparison, a Captain in the Perth Amboy Fire Department can make as much as \$123,782 per year, and Battalion Chief can earn up to \$133,887 annually. In addition, it is estimated that the unemployment rate in Perth Amboy in 2020 was 13.5%, compared to 9.8% in New Jersey. Moreover, 19% of Perth Amboy residents are living in poverty, compared to 8.5% in Middlesex County, and 9.2% in New Jersey.

Private Employment in General

Since 2011, the national increase in salary and wages in private employment was only a total of 16.30%. In addition, from 2011 through 2018, the national private sector IAFF salary increase was a total of 16.8%. In New Jersey specifically, the private sector increase from 2011 to 2017 was 13.6%, which is an average of 1.9% per year. By comparison, Perth Amboy Fire Officers received an 18.1% salary increase from 2011 through 2017, which was an average of 2.59% per year. Furthermore, real average hourly and weekly earnings were only up 1.1% from November 2018 to November 2019, and 0.7% from March 2019 to March 2020. Finally, the real average weekly earnings decreased 1.4 percent for year ended April 2021 and were down 2.2% from May 2020 to May 2021.

Based on these figures, Perth Amboy Fire Officers have received increases greater than employees in the private sector. Further, most private sector employees and other Perth Amboy employees do not receive the extra compensation that Perth Amboy Fire Officers receive. In addition to base salary, Perth Amboy Fire Officers earn extra compensation for certifications and education pay.

Public Employment in General

Fire Officers have also fared better than their public sector counter parts. Public sector employees nationwide from 2011 through 2018 received a total increase to wages of 12%, whereas Fire Officers received an increase of 21.3%. Over that same period of time, public sector employees throughout the United States received on average a 1.5% increase in wages per year. In New Jersey specifically, public sector employees received an average increase of 1.45% from 2011 through 2017.

Internal Comparisons

Internal comparability can be broken down into two general categories consisting of uniformed and non-uniformed employees within the same jurisdiction. An internal pattern of settlement in the same jurisdiction involving both uniform and non-uniform employees is a

significant factor in the determination of an award because it usually corresponds to a public employer's budgetary capabilities and connotes uniform treatment.

The non-bargaining unit increases during the years that are in question for Local 4070 were: 1.0% in 2019; 2.0% in 2020; and 1.5% in 2021. This results in the same 3-year average of 1.5% that Firefighters received for the first three years of their settlement.

The City and Teamsters Local 97 that represents the blue-collar workers for the City agreed to a Collective Negotiations Agreement for the term January 1, 2019 through December 31, 2022 that provides for salary increases of 1.5% in 2019, 1.5% in 2020, 1.5% in 2021 and 1.5% in 2022.

The City and IAFF Local 286 that represents the Firefighters agreed to a Collective Negotiations Agreement for the term January 1, 2019 through December 31, 2022 that provides for salary increases of 1.5% in 2019, 1.5% in 2020, 1.5% in 2021 and 1.5% in 2022 plus step increments. The salary paid to a Senior Firefighter II in 2019 is \$95,065, in 2020 is \$96,491, in 2021 is \$ 97,938, and in 2022 is \$99,407. The Fire Captain salary is paid off these amounts with a Battalion Chief paid off the Captain salary. The Award herein is consistent with these salary increases and the Fire Department pattern.

The City and PBA Local 13 that represents the police officers agreed to a Collective Negotiations Agreement in April 2021 for the term January 1, 2019 through December 31, 2024 that provides for salary increases of 1.5% in 2019, 1.5% in 2020, 1.75 % in 2021, 2.5% in 2022, 2.5% in 2023 and 2.5% in 2024. The salary paid to a police officer at step 10 (top step) in 2019 is \$92,517, \$93,905 in 2020, \$95,548 in 2021 and \$97,937 in 2022. The differentials paid to the Police Superior Officers is paid off those amounts.

The City and Superior Officer Association FOP Lodge 80 that represents Police Superior Officers including Sergeants, Lieutenants and Captains are parties to a Collective Negotiations Agreement from January 1, 2015 through December 31, 2018. The agreement provides for salary differential step increases for Sergeants of 6.5%, 7.5%, 8.5%, 9.5% and 10.5%; for Lieutenants of 10.5% and Captains 10.5%. The base salary of a Sergeant is \$101,928 at step 1 and \$105,757 at top step, a Lieutenant is \$116,861 and Captain is \$129,132.

Both parties agree that the most relevant comparable for consideration is the Police Superior Officers. The City submits a Fire Captain earns the 10% differential the first year he/she is promoted while a police officer promoted to Sergeant earns a first-year differential of 6.5% taking five (5) years to earn a differential of 10.5%. The City asserts that Fire Officer can also earn more 'additional' compensation than a Police Superior. Under the Local 4070 Agreement, Fire Officers are eligible to receive additional compensation for EMT and first responder certification pay, Fire Instructor pay, and Training pay. Thus, not including longevity pay, uniform allowance, holiday pay and education pay, a Fire Officer can earn as much as \$9,100 more in additional compensation than Police Superiors.

The IAFF submits that given the similarities in the duties of the two positions, the rank differentials between Police Officers and Police Lieutenants and between Firefighters and Fire Captains would be expected to be the same. However, Police Lieutenants are paid a 21% rank differential, while Fire Captains are paid a rank differential of 10%. The IAFF submits that given the similarities in the duties and responsibilities of the two positions, the rank differentials between Police Lieutenants and Fire Captains and between Police Captains and Battalion Chiefs would be

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expected to be the same. However, there is a compressed rank differential for Fire Officers compared to Police Superior officer salaries.

The IAFF argues that under the City's Final Offer, the disparity between Police Superior Officers and the Fire Officers will be exacerbated by the PBA settlement. While the City is offering 6% over four years to the Fire Officers, the City's settlement with the PBA provided for increases of 7.25% over the same four years and an additional 5% over the last two years of the PBA Agreement. The cost of increments under the PBA Agreement, similar in structure to the Firefighters Agreement, exceeds both the cost to the City and the salary increases for rank-and-file police officers.

The salary of a top step police officer in 2018 was \$91,150 compared to Senior Firefighter II salary of \$92,241. The superior officer differentials for Police Superiors and Fire Superiors are based off of these salaries. Despite the top step police officer salary being lower than a Senior Firefighter II salary, the police superior salary is greater than the fire superior salary. In 2018, a Sergeant at step one earns \$101,928 and at top step earns \$105,757; a Lieutenant earns \$116,861 and Captain \$129,132. In 2018, Fire Captain earns \$101,526 and Battalion Chief \$109,140. Applying the PBA salary increases to the Police Superior salaries under the current differentials a top step Sergeant would earn \$107,343 in 2019, \$108,953 in 2020, \$110,860 in 2020 and \$113,631 in 2022. A Lieutenant would earn \$118,715 in 2019, \$120,486 in 2020, \$129,353 in 2021 and \$132,771 in 2022. A Captain would earn \$131,068 in 2019, \$133,035 in 2020, \$135,363 in 2021, and \$138,797 in 2022. Under this Award, Police Superior Officers would continue to earn more than Fire Captains and Battalion Chiefs.

On paper, the Civil Service Job Descriptions of the duties of the positions of Police Lieutenant and Captain and Firefighter Captain and Battalion Chief seem similar. There was no testimony of the nature of these duties. However, in 2014, the City along with the IAFF, negotiated title changes for the Fire Department, with no additional pay raises, to satisfy the nationally recognized standards as dictated by the National Fire Protection Association (NFPA). The changes adjusted the Department's organizational structure to ensure that a properly ranking incident commander will be on scene at every fire event, along with a company officer, to direct firefighting efforts pursuant to the NFPA guidelines. These unique and significant changes to the Department's organizational structure and need to satisfy the NFPA standards continues past the expiration of the 2018 Agreement for the term of this Agreement and the increase in the differentials to Fire Officers speaks to the increase in job responsibility as noted by Arbitrator Mastriani.

The internal comparable analysis does not support awarding the additional language regarding the extensions of the differentials beyond the expiration of the agreement. No other CNA in the City has such language, and the IAFF has not demonstrated why such language should be awarded.

External Comparisons

External comparability consists of comparisons between the group subject to the petition and other public safety employees in similar jurisdictions, other public employees, generally, and private sector comparisons. In weighing salary statistics introduced by a party, PERC has promulgated guidelines that may 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 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.

Salary comparisons

Since 2011, comparability of percentage increases for interest arbitration has been considered but has been less relevant due to the 2% salary cap. Now that the 2% salary cap has sunset, comparability has once again become a significant criterion to address.

According to the 2018 Biennial Report on the Police and Fire Interest Arbitration Reform Act issued by PERC, the number of interest arbitration petitions decreased since the implementation of the 2% hard cap. After enactment of the law, there were twenty (20) petitions in 2015, nine (9) in 2016, and twenty-nine (29) in 2017. The number of interest arbitration awards issued has remained low with two (2) issued in 2018; six (6) in 2019; and six (6) issued in 2020. For the years 2012 through 2019, the average annual salary increases for all interest arbitration awards were: 2012-1.82%; 2013-1.85%; 2014-1.71%; 2015-1.71%; 2016-2.65%; 2017-1.74%; 2018-2.01%; 2019-3.36%.

Like other interest arbitration proceedings, the parties can find “comparable” data from “comparable jurisdictions” that support their Final Offers. The analysis includes the numbers they seek comparing salaries in different jurisdictions, salary guides, work schedules, longevity, fringe benefits, and other terms of employment. The percentage and number comparisons of various salaries alone are problematic when the only item cited is “salary.” What makes up “salary” and salary guides significantly vary. Here, for example, the IAFF’s salary includes longevity and holiday pay. Also, collective negotiations by definition involve a “give and take” with the goal of structuring an overall package that includes health benefits, sick leave, vacation leave, longevity, work schedules, tuition reimbursement, uniform allowance, retiree health benefits, among other items. The comparable data must be examined in this context.

The IAFF submitted the following collective negotiations agreements as external comparables for consideration: Belleville, Clifton, Edison, Elizabeth, Hackensack, Jersey City, Long Branch, Maplewood, Montclair, New Brunswick, Newark, North Hudson, Passaic,

Plainfield, Teaneck, IAFF Township, West Orange, Woodbridge, and District 1. The City challenges the IAFF's analysis of "comparable" fire departments as not being comparable.

The salaries and salary differentials for the Lt./Captain and Battalion Chief/Deputy Chief for some of the municipalities offered as "comparable" are as follows: Belleville \$121,121/33.5% and \$138,139/52.09%; Clifton \$131,487/24.81% and \$146,912/39.45%; Edison \$140,687/11.36% and \$158,390/25.37%; Elizabeth \$126,710/27.51% and \$149,235/50.18%; Long Branch \$135,234/11.41% and \$150,748/24.19%; Maplewood \$115,273/16.19% and \$131,949/33%; New Brunswick \$129,063/29.84% and \$145,694/46.58%; Newark \$116,293/21.42% and \$131,473/37.27%; North Hudson \$132,981/40.91% and \$149,500/58.41%; Teaneck \$120,567/21.90% and \$127,486/28.90%; IAFF Township \$134,261/25.15% and \$145,947/36.04%; and District 1 \$121,44/29.50% and \$131,424/18.50%.

Both parties recognize Perth Amboy salaries, in general, lag behind other municipalities in Middlesex County and the State. Recognizing the City's comparability arguments and objections, the IAFF analysis of fire department titles and salaries is nevertheless helpful in understanding the range of compensation for similar titles in other jurisdictions and the need for some increase to the salary differential during the term of the agreement here. Perth Amboy is one of the lower paid Fire Departments and this Award does not alter that fact. That said, the Award herein maintains Perth Amboy's ranking amongst other fire departments in Middlesex County and the State.

The external comparable analysis does not support awarding the additional language regarding the extensions of the differentials beyond the expiration of the agreement. There was no evidence that other Fire Department agreements have such language, and the IAFF has not demonstrated why such language should be awarded.

Private Sector Wage Data

Although an arbitrator must consider the general level of wage increases in the private sector, an arbitrator is not required to accord such statistics any weight. Indeed, unless a party presents credible evidence comparing a private sector classification to a public sector classification, the private sector comparison will be considered but not given much weight. I do not afford much weight to the private sector comparison but note the parties' arguments.

On July 9, 2021, PERC published its most recent report of private sector wage changes based on data compiled by the New Jersey Department of Labor and Workforce Development. For the fiscal year period July 1, 2019 through June 30, 2020, according to PERC's reporting, private sector wages increased 10.5%; government wages increased 5.7%; and total average annual wages increased 9.8%. The government wage increases were .5% for the federal government, 2.9% for state government, and 7.2% for local government.

Overall Terms and Conditions of Employment 16g(3)

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.

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The evidence considered by the Arbitrator encompasses the *status quo* terms and conditions of employment and note that that this unit receives the following: holiday pay, longevity, uniform allowance, education allowance, payment for unused vacation/sick leave upon retirement, holidays, personal leave, sick leave, pension, bereavement leave, health insurance.

The current compensation package provided to Fire Officers is good and only the salary differential is slightly enhanced by this Award. In 2019, a Fire Captain will earn an annual salary of \$104,572 and a Battalion Chief \$112,415. They will also continue to receive longevity benefits on top of base salary. These additional longevity benefits range from 2% of base salary after 4 years of service, to 10.5% of base salary after 24 years of service. In 2020, Fire Officer longevity payments ranged from \$2,201 to \$11,985 in additional compensation. The Fire Officer cost of longevity will increase due to years of service, an increase in the number of Fire Officers and as a result of the increases awarded herein. In 2018, the cost of longevity was \$72,566. In 2019, the cost increases to \$99,621, to \$107,676 in 2020, to \$127,541 in 2021 and to \$148,870 in 2022. In addition to longevity payments, holiday pay is added to base salary. Holiday pay, ranges from \$6,592 to \$7,762 and will increase slightly in 2021 and 2022 dues to the increase awarded herein.

The Fire Officers will continue to receive additional ompensation on top of longevity and holiday pay including the following: NJDOH EMT-D certification (Article XIII) \$1,000; First Responder certification (Article XIII) \$500; Uniform allowance (Article XX) \$850; Battalion Chief Incident Management Level II, Hazardous Materials On Scene Incident Command and Fire Incident Safety Officer Training (Article XXII) \$2,500; Captain Incident Management Level II, Hazardous Materials On Scene Incident Command and Fire Incident Safety Officer Training (Article XXII) \$1,500; Associates Degree (Article XXII) \$750; Bachelor's Degree (Article XXII) \$1,250; Master's Degree (Article XXII) \$1,750; State of NJ Fire Instructor Level 1 (Article XXXIX) \$1,500; and State of NJ Fire Instructor Level 2 (Article XXXIX) \$2,500.

The overall compensation package for a Fire Officer is good, and the IAFF has not demonstrated that the additional language extending the differential after the expiration of the agreement is warranted under this criterion.

The Stipulation of the Parties, N.J.S.A. 34:13A-16g(4)

The Parties stipulated to their agreement to the following prior to the hearing:

Throughout contract, change the terms "Fire Chief," "Chief," "Fire Director," and "Director" to the term "Chief."

1. Article II, Recognition, add the following sentence:

Throughout this document, the term "Chief" shall refer to the Chief of the Department of Fire, the highest ranking career official in the department and its department head.

2. Article IV, IAFF Security

Section 3. [Agency Shop] **Reserved** - (Delete and reserve due to Janus Supreme Court decision)

3. Article V, IAFF Activity, Section 4 Time Off, first paragraph, shall read as follows:

The Employer agrees to grant the necessary time off with pay and without discrimination to no more than one (1) member per shift designated by the IAFF to attend official state and international IAFF meetings, include firefighter conventions, provided [seventy-two (72) hours] fourteen [14] calendar days written notice is given to the Employer by the IAFF.

Section 7 shall read as follows:

The IAFF negotiating committee shall be granted leave from duty with full pay for all meetings between the Employer and the IAFF for the purpose of collective negotiations when such meetings take place at a time during which they are scheduled to be on duty. However, the total number of IAFF representatives that will affect shift strength shall not exceed two (2).

4. Article IX, Vacancies

Section 4. Reserved - (Delete and reserve as contract may not cover persons who are not members)

5. Article XIV, Longevity, Section 1:

Delete last paragraph, except for the words "Longevity shall be computed on an Employee's anniversary date of the original date of hire."

6. Article XV, Holiday and Holiday Pay, Section 1 shall be revised to read as follows: Each fire officer shall receive [sixteen (16)] twelve (12) paid holidays pay per year (the equivalent of [128 hours] 96 hours) in lieu of holidays, payable on a proportional basis during each pay period.

Add the following sentence: "Note the effective January 1, 2019, four (4) holidays were incorporated into base pay to equalize holiday benefits with other City employees."

7. Article XVI, Annual Vacation and Vacation Pay

Section 6. Reserved - (Delete and reserve as direct deposit no longer makes this section applicable).

Section 7, last sentence, shall read as follows:

"In case of the death of an employee, all vacation pay shall be paid to the beneficiary on file, or if none, to the estate."

8. Article XIII, Sick Leave, Section 8 shall read as follows:

"In case of death of an employee, all sick pay shall be paid to the beneficiary on file, or if none, to the estate."

9. Article XIX, Bereavement Leave First paragraph shall read as follows:

"Employees shall be granted time off without deduction from pay or sick leave for the following requests: Death in the immediate family, limited to the period from the date of death to and including the day of the funeral, not to exceed two workdays."

10. Article XXII, Educational Differential, (NEW) Section 5 shall read as follows:

"Paperwork required for an education stipend shall be submitted prior to the start of the year in which it is requested to begin. An education stipend is not retroactive."

11. Article XXVII, Safety and Health, delete current Section 1 and 2 and replace with the following:

Section 1

The Employer shall provide and maintain:

- Station uniforms including Nomex long and short sleeve shirts and pants
- Personal Protective Equipment including turnout gear, helmets, boots, gloves, hoods and emergency escape systems
- Fire apparatus including all engines/pumpers, ladders, rescues, etc.
- Self-contained breathing apparatus and fill stations
- Firefighting and rescue equipment
- Emergency medical equipment

12. Article XXXVIII, Personal Leave, Section 3 shall read as follows:

"In case of death of an employee, all time accrued shall be paid to the beneficiary on file, or if none, to the estate."

The Lawful Authority of the Employer, N.J.S.A. 34:13A-16g(5)

While the 2% hard cap has sunset, statutory limitations are specifically referenced in other criteria, including the lawful authority of the employer, the tax cap levy and other statutory restrictions upon the employer. N.J.S.A. 34:13A-16(g)(5) requires the arbitrator to consider the "lawful authority of the employer," and specifically references P.L. 1976, c. 68, which is codified at N.J.S.A. 40A:4-45.1 et seq. The aforementioned statute is commonly known as the "Local Government Cap Law," and states, "it is hereby declared to be the policy of the Legislature that the spiraling cost of local government must be controlled to protect the homeowners of the state and enable them to maintain their homesteads." N.J.S.A. 40A:4-45.1. The New Jersey Legislature established a second tax levy cap established by section 10 of P.L. 2007, c. 62, which is now codified at N.J.S.A. 4-45.45. As part of this legislation, the Interest Arbitration Act was also amended to include a ninth and final criteria for the arbitrator's consideration, "the statutory restrictions imposed upon the employer," which specifically includes "the limitations imposed upon the employer by section 10 of P.L. 2007, c.62." N.J.S.A. 34:13A-16(g)(9).

Section 10 of P.L. 2007, c.62 originally established a tax levy cap of four percent (4.0%) above the previous year's tax levy. However, on July 13, 2010, Governor Christie signed into law P.L. 2010, c. 44 in order to cut the allowable tax levy increase to two percent (2.0%). As explained above, the two percent (2.0%) tax levy cap "caps the amount that you raise the tax by 2 percent."

The Appellate Division in Hillsdale interpreted the "lawful authority of the employer" criterion to refer to the Local Government Cap Law. Hillsdale, 263 N.J. Super. at 193. The Supreme Court agreed, stating, "Given the existence of financial constraints and budget caps... an award to police or fire departments necessarily affects other municipal employees and the entire municipal budget." Hillsdale, 137 N.J. at 86. In Hillsdale, the Appellate Division required the arbitrator to consider the impact of the award on other budget items. Hillsdale, 263 N.J. Super. at 194. When applying the lawful authority of the employer criterion, the Arbitrator must address the City's budget cap situation, as well as the statutory requirement that the City prepare a balanced budget each year.

Perth Amboy's current tax levy is almost \$2 million under the Property Tax Levy Cap. In addition, the City also has more than \$5.0 million of unused revenue capacity in its Cap Bank. The modest increase in the Fire Officer's differential awarded herein does not implicate the lawful authority of the City under the Property Tax Levy Cap law.

The Financial Impact on the Governing Unit, Its Residents, The Limitations Imposed Upon the Local Unit's Property Tax Levy, and Taxpayers, N.J.S.A. 34:13A-16g(6)

N.J.S.A. 34:13A-16g (6) also requires the Arbitrator to consider the financial impact of the parties' offers on the governing unit, its residents and taxpayers. In IAFF Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), the court noted that the financial impact requirement in the statute does not equate with the municipalities' ability to pay. Id. at 188. The Supreme Court stated in Hillsdale that a municipality should not have to prove that it is not financially able to afford the IAFF's final offer. 137 N.J. at 86. This criterion encompasses a far more searching and critical analysis than simply whether a local government has the ability to pay an award. It does not require the local government to prove that it would suffer financial difficulties as a result of an award. Id. Put differently, a local government "should not have to demonstrate it would be financially crippled before its arguments could be found to be sufficient." Id. at 194. Arbitrators have recognized this fact as well. Arbitrator Barbara Tener analyzed this issue in In the Matter of Interest Arbitration between Borough of Oakland and Oakland IAFF Local 164, IA-93-069 (1994) noting that "[T]he affordability of the respective packages is not, in my view, a very weighty factor unless the more reasonable package is also the more expensive. The question of whether the Borough can afford the IAFF's offer is not dispositive in this case."

The New Jersey Supreme Court emphasized that "it is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of the public interest arbitration award." Id. (quoting Hillsdale, 263 N.J. Super. at 188). Moreover, the municipality does not carry the burden of proving its financial inability to meet the Association's final offer. Id. In addition, the correct application of this criteria does not require an employer to provide that it would suffer a "substantially detrimental result," or that the financial difficulties would be created or worsened.

Hillsdale, 263 N.J. Super. at 194. Rather, the effect that the award will have on other employees and the employer's overall budget must be considered by the Arbitrator. Hillsdale, 137 N.J. at 86.

The City argues any increase in the Fire Officer's differential will be felt City-wide and will be devastating to Perth Amboy's taxpayers and residents. The IAFF maintains that increases are warranted and can be afforded by the City.

As noted above, the Award herein is consistent with the City's Final Offer in 2019 and 2020 which was budgeted. The cost of salary difference in the Award and the City Final Offer in 2021 is \$22,578 and in 2022 is \$45,828 and is well within the City's financial ability to pay and is a unique method to continue to compensate the Fire Officers during the term of this agreement to speak to the job responsibility issues resulting from impact of the command structure changes.

Cost-of-Living Criterion, N.J.S.A.34:13A-16g(7)

The Consumer Price Index "CPI" is a measure of the average change, over time, in the prices paid by consumers for a market basket of consumer goods and services. Goods and services measured by the CPI include food and beverages, housing, apparel, transportation, recreation, education and communication, and all other goods and services. The CPI is the most widely used measure of inflation. The CPI for all urban consumers in the United States was 4.1 percent in June 2021 based on CPI data with the CPI in the Northeast reported at 4.6%. Compensation costs rose 2.8% for the year ended March 2021.

An annual Cost-of-Living Adjustment (COLA) is authorized under the Budget Cap Law, N.J.S.A. 40A:4-45.1.a. Under the Budget Cap Law, the Department of Local Government Services ("DLGS") announces the COLA. The DCA announced COLA for calendar year 2019 budgets was 2.5%. In addition, the CPI is often used to adjust consumer's income payments, for example, Social Security, to adjust income eligibility levels for government assistance and to automatically provide cost of living wage adjustments to millions of American workers. The COLA for Social Security benefits in 2018 was 2.8%, in 2019 was 1.6%, and in 2020 was 1.3%.

The cost of living has increased since the expiration of the parties' agreement. In the New York/ Newark area, the CPI increased 1.7% during the twelve (12) months ending June 31, 2019, and 1.3% during the twelve (12) months ending June 31, 2020. However, during the most recent twelve (12) months ending June 30, 2021, the CPI increased 4.1%. On July 13, 2021, BLS reported that for the entire Northeast Region the CPI-U had advanced 4.6 percent, over the last twelve (12) months.

The increase salary differential awarded herein is below the current cost of living and consistent with the cost of living for the initial years of this Award.

The additional language sought by the IAFF should be examined based on the facts at that time including the cost of living.

Continuity and Stability of Employment, N.J.S.A. 34:13A-16g(8)

N.J.S.A. 34:13A-16g(8) provides for consideration of:

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.

The continuity and stability of employment criteria incorporates several concepts. The first providing a competitive compensation and benefits package that alleviates excessive turnover thus maintaining "continuity and stability in employment." The second is the concept of the "relative standing" of a negotiations unit with respect to other units of similar employees. Last, the continuity and stability of employment criteria incorporates the consideration of internal settlements and comparability, since deviation from such settlements can undermine morale, discourage future settlements, and affect labor relations stability.

Perth Amboy Fire Officers have enjoyed continuity and stability of employment which is reflected by its strong retention. In 2018, one Fire Captain retired after 23 years of service with the Department. Six (6) of the twelve (12) Fire Officers have over twenty (20) years of service with the Department. In 2021, eleven (11) of the fourteen (14) members have had at least fifteen (15) years of service with the Department. Furthermore, besides one (1) retirement, the Fire Department has not experienced a Fire Officer voluntarily leaving the Department to seek employment elsewhere. In 2019, there were not any Fire Officers who left the unit, and the Department added three (3) additional Fire Officers. Similarly, in 2020 not one Fire Officer left the Department, and four (4) additional Fire Officers were added. Retention has been outstanding.

The IAFF argues the City had previously embraced a common purpose "for the need to enhance superior officers' salaries in relation to rank and file salaries to further interest in the more senior firefighters to seek promotions and to speak to job responsibility issues arising from the impact of the title changes." The City, in 2012 and 2013, had adjusted the Department's organizational structure "to ensure that a properly ranking incident commander will be on scene at every fire event, along with a company officer, to direct firefighting efforts pursuant to the NFPA guidelines." The Fire Officers have responded productively ensuring the Department's continued growth and success.

As noted previously, salaries and rank differentials earned by the Fire Officers lag behind their peers in urban centers and surrounding communities, including the Police Superior Officers employed by the City. In the 2015 negotiations, the parties recognized that the lagging salaries would operate to dissuade Senior Firefighters from assuming enhanced responsibilities without a meaningful increase in pay. Recognizing the City's asserted financial issues and that the disparity in pay could not be fixed in one shot, the parties agreed upon an increase in the rank differential over the life of the 2018 Agreement.

The Award continues the parties' unique common purpose during the term of this Agreement in light of the availability of funding and the disparity in salary levels, and helps maintain the continuity and stability of employment.

The strength of the continuity and stability of employment in the Fire Officers units suggests the additional language extending the differential past the expiration of the agreement is not warranted and should be examined based on the evidence at the time.

Other Restrictions Imposed on the Employer, N.J.S.A. 34:13A-16g(9)

The Legislature has codified the "cap consideration" requirements and statutory limitations on the employer set forth in section 10 of P.L. 2007, c.62 (C. 40A:4-45.45) in section 16g(9). Those restrictions are not applicable to the Award rendered herein.

AWARD

Based upon the application of 16g criteria and the record before me, I respectfully enter the terms of this Award.

1. **Duration.** Four (4) years term January 1, 2019 to December 31, 2022.
2. **Wages.**

The following SALARY GUIDE is based on the below annual increases to the Senior Firefighter salaries:

- i. 2019 - 1.5% 95,065
- ii. 2020 - 1.5% 96,491
- iii. 2021 - 1.5% 97,938
- iv. 2022 - 1.5% 99,407

SALARY GUIDE

		1/1/19	1/1/20	1/1/21	1/1/22
	Diff. to Sr. FF	10%	10%	11.25%	12.5%
Captain		\$ 104,572	\$ 106,140	\$ 108,956	\$ 111,832
		1/1/19	1/1/20	1/1/21	1/1/22
		7.5%	7.5%	7.5%	7.5%
Battalion Chief	Diff. to Capt.	\$ 112,415	\$ 114,101	\$ 117,127	\$ 120,219

3. **Stipulations of the parties prior to hearing.**

Throughout contract, change the terms "Fire Chief," "Chief," "Fire Director," and "Director" to the term "Chief."

- a. Article II, Recognition, add the following sentence:

Throughout this document, the term "Chief" shall refer to the Chief of the Department of Fire, the highest ranking career official in the department and its department head.

- b. Article IV, IAFF Security

Section 3. [Agency Shop] **Reserved** - (Delete and reserve due to Janus Supreme Court decision)

- c. Article V, IAFF Activity, Section 4 Time Off, first paragraph, shall read as follows:

The Employer agrees to grant the necessary time off with pay and without discrimination to no more than one (1) member per shift designated by the IAFF to attend official state and international IAFF meetings, include firefighter conventions, provided [seventy-two (72) hours] fourteen [14] calendar days written notice is given to the Employer by the IAFF.

Section 7 shall read as follows:

The IAFF negotiating committee shall be granted leave from duty with full pay for all meetings between the Employer and the IAFF for the purpose of collective negotiations when such meetings take place at a time during which they are scheduled to be on duty. However, the total number of IAFF representatives that will affect shift strength shall not exceed two (2).

d. Article IX, Vacancies

Section 4. Reserved - (Delete and reserve as contract may not cover persons who are not members)

e. Article XIV, Longevity, Section 1:

Delete last paragraph, except for the words "Longevity shall be computed on an Employee's anniversary date of the original date of hire."

f. Article XV, Holiday and Holiday Pay, Section 1 shall be revised to read as follows:

Each fire officer shall receive [sixteen (16)] twelve (12) paid holidays pay per year (the equivalent of [128 hours] 96 hours) in lieu of holidays, payable on a proportional basis during each pay period.

Add the following sentence: "Not effective January 1, 2019, four (4) holidays were incorporated into base pay to equalize holiday benefits with other City employees."

g. Article XVI, Annual Vacation and Vacation Pay

Section 6. Reserved - (Delete and reserve as direct deposit no longer makes this section applicable).

Section 7, last sentence, shall read as follows:

"In case of the death of an employee, all vacation pay shall be paid to the beneficiary on file, or if none, to the estate."

h. Article XIII, Sick Leave, Section 8 shall read as follows:

"In case of death of an employee, all sick pay shall be paid to the beneficiary on file, or if none, to the estate."

i. Article XIX, Bereavement Leave First paragraph shall read as follows:

"Employees shall be granted time off without deduction from pay or sick leave for the following requests: Death in the immediate family, limited to the period from the date of death to and including the day of the funeral, not to exceed two workdays."

j. Article XXII, Educational Differential, (NEW) Section 5 shall read as follows:

"Paperwork required for an education stipend shall be submitted prior to the start of the year in which it is requested to begin. An education stipend is not retroactive."

k. Article XXVII, Safety and Health, delete current Section 1 and 2 and replace with the following:

Section 1

The Employer shall provide and maintain:

- a. Station uniforms including Nomex long and short sleeve shirts and pants
- b. Personal Protective Equipment including turnout gear, helmets, boots, gloves, hoods and emergency escape systems
- c. Fire apparatus including all engines/pumpers, ladders, rescues, etc.
- d. Self-contained breathing apparatus and fill stations
- e. Firefighting and rescue equipment
- f. Emergency medical equipment

l. Article XXXVIII, Personal Leave, Section 3 shall read as follows:


"In case of death of an employee, all time accrued shall be paid to the beneficiary on file, or if none, to the estate."

4. All other proposals by the City and the IAFF not awarded herein are denied and dismissed.
5. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.
6. 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. The Award also explains how the statutory criteria factored into my final determination.
7. The total cost of salary for the Fire Officers at December 31, 2018, was \$1,154,856 comprised of five (5) Battalion Chiefs at \$109,140 and six (6) Captains at \$101,526. In 2019, the total cost of salary increases to \$1,511,066 comprised of six (6) Battalion Chiefs at \$112,415 and eight (8) captains at \$104,572. In 2020, the total

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cost of salary increases to \$1,639,866 comprised of six (6) Battalion Chiefs at \$114,101, eight (8) Captains at \$106,140 and four (4) Captains promoted September 30th at \$26,535. In 2021, the total cost of salary increases to \$2,010,234 comprised of six (6) Battalion Chiefs at \$117,127 and twelve (12) Captains at \$108,956. In 2022, the total cost of salary increases to \$2,063,298 comprised of six (6) Battalion Chiefs at \$120,219 and twelve (12) Captains at \$111,832.

8. The four (4) year increase in the salary totals 8.5% or 2.125% per year. The total cost of the salary Award over the four (4) year term is \$908,442 or \$227,110 per year. The cost of salary difference in the Award and the City Final Offer in 2021 is \$22,578 and in 2022 is \$45,828.



Brian W. Kronick, Esq.
Interest Arbitrator

Dated: August 11, 2021

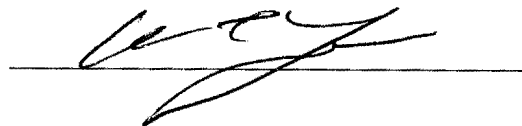
State of New York }

ss:

County of Ulster }

On this 11th day of August 2021, before me personally came and appeared Brian W. Kronick to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

MATTHEW DAVID ROSENBERGER
NOTARY PUBLIC STATE OF NEW YORK
ULSTER
LIC. #01RO6336701
COMM. EXP 02/08/2024



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