

**In the Matter of the Arbitration**

**between**

**City of Passaic**

**and**

**Passaic Fire Officers Association**

I was appointed as the interest arbitrator in this matter by letter dated July 24, 1996 from Timothy Hundley, Acting Director, Arbitration, Public Employment Relations Commission ("PERC"). I met with representatives of the City of Passaic ("City") and the Passaic Fire Officers Association ("PFOA") in an informal mediation session on October 7, 1996. Formal hearings were held on October 29, 1996, January 10, 1997, March 31, 1997 and May 9, 1997. Following receipt of the transcript, both parties filed post-hearing briefs. Mr. Mason was on the city's brief. These were received by July 1, 1997, thereby marking the close of the hearing.

As set forth in Article I, Recognition, of the parties' January 1, 1994 to December 31, 1994 agreement, the employees included in the bargaining unit are deputy chiefs, battalion chiefs, captains and lieutenants.

The proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render the opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension. As set forth in a letter from Mr. Leder dated May 12, 1997, the parties mutually agreed to extend to time for the issuance of a decision to September 1, 1997.

As agreed to the parties and as permitted by N.J.A.C. 19:16-5.7(f) of the PERC's Rules, the parties submitted revised final offers prior to the close of the hearing on May 9, 1997.

In the absence of an agreement to the contrary, the terminal procedure in this case is conventional arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g. of this section."

### **Statutory Criteria**

The statute requires the arbitrator to:

decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

(1) The interests and welfare of the public. Among the

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

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

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

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

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

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

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county,

the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment. (N.J.S.A. 34:13A-16g)

### Final Offers

City The City's final offer calls for a three and one-half year agreement covering the period from January 1, 1995 through June 30, 1998. It consists of three<sup>1</sup> predominantly economic proposals:

1. Salary:     January 1, 1995 – 1.5%  
                  July 1, 1995 – 1.5%  
                  July 1, 1996 – 1.5%  
                  July 1, 1997 – 1.5%
2. Longevity:
  - A. Eliminate the 14% longevity bonus step for employees hired on or after April 11, 1972. (Under this proposal, employees currently receiving 10% longevity bonus as well as employees hired after the date of this award would be eligible only to receive a maximum of 12% longevity bonus.)
  - B. All new employees hired October 1, 1996 and thereafter will not be eligible for any longevity benefits.

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<sup>1</sup> The City dropped its proposal to change health benefits because of a reduction in the State Health Benefits Plan premium.

3. Sick Leave Policy:

A. For current employees, reduce from 15 "days" per year to 10 "days" per year. In other words, reduce from 360 hours (i.e. 45 eight-hour days) of sick leave to 240 hours (i.e. 30 eight-hour days) of sick leave per year. Civil Service rules and regulations require a minimum of 15 "days" of sick leave per year, interpreted to mean 15 "days", of 8 hours each, minimum per year. This proposal, if awarded, will leave each current Fire Officer with 30 "days" of sick leave per year, which is double the minimum Civil Service requirement.

B. For new employees hired January 1, 1997 and thereafter, reduce from 15 "days" to 8 "days" per year. In other words, reduce from 360 hours (i.e. 45 eight-hour days) of sick leave per year to 192 hours (i.e. 24 eight-hour days) of sick leave per year. Civil Service rules and regulations require a minimum of 15 "days", of 8 hours each, minimum per year. This proposal, if awarded, will leave each new Fire Officer with 24 "days" of sick leave per year, which is 9 more "days" than the minimum civil Service requirement.

C. Delete permitted "family" sick leave.

D. Doctor's note required after 3 incidents.

**PFOA** The final offer of the PFOA is as follows:

1. **Article XI** – All fire officers shall be entitled to two (2) personal days per year. These personal days, if used, will be subtracted from the sick leave entitlement.
2. **Sell-back of Sick Time** – On or about January 1 of each year, all fire officers shall be permitted to sell one-half ( $\frac{1}{2}$ ) of their sick leave which was unused in the prior year. Said payment shall be paid no later than February 1. The maximum any fire officer can receive pay for is seven and one-half ( $7 \frac{1}{2}$ ) days.
3. **Article XII** – Modify the supplemental compensation rate to provide that each accumulated day shall be equivalent to an eight (8) hour day rather than a four (4) hour day.
4. **Article VIII** – Modify to provide that after completion of twenty-four (24) years of service, all fire officers shall be entitled to 12% longevity.
5. Additionally, all fire officers currently employed shall continue to be eligible to receive 14% longevity. No future fire officers shall be eligible for 14% longevity.

6. **Article VII – Wages** –

Effective January 1, 1995	5%
Effective January 1, 1996	5%
Effective January 1, 1997	5%
Effective January 1, 1998	2½ %

7. Based upon the layoff of both battalion chiefs and the increased workload upon lieutenants and captains, those two ranks shall receive an adjustment to their salary:

Effective January 1, 1995	1%
Effective January 1, 1996	½ %
Effective January 1, 1997	½ %

- 8 The parties agree that in the event the City determines to abolish titles or demote all employees in a title or take other action such that the title represented by the Association is unfilled, the parties shall meet to negotiate the impact on terms and conditions of employment of the remaining employees in the remaining titles.

9. Duration of Contract: January 1, 1995 through June 30, 1998.

**Agreed Items** The parties agreed upon the following five items which are to be included in the new agreement. These relate to overtime, vacation, grievance procedure, Union representation and clothing allowance.

The parties agreed to clarify the procedure for scheduling employees who desire to work overtime.

They agreed that only for 1995 accumulated vacation, this accumulated vacation must be used by December 31, 1997. (Not December 31, 1996, as required in the new 1994 contract.) Anyone who has more than one year's accumulated vacation as of December 31, 1997 shall be paid \$25.00 per day as full payment for those days to be lost as of December 31, 1997. This \$25.00 per day payment shall be paid to the employee no later than January 31, 1998.

They agreed to add this language as a new last sentence to step 3 on page 8 of the grievance procedure: "Whenever the Director's position is being filled by the Business Administrator, a Council Member or the Mayor, or one of these serving as the Acting Director, skip the Director's step in the grievance procedure."

They agreed to add the following language after the current words "Upon prior Notice": "at least 24 hours notice if possible."

Finally, they agreed to change Clothing Allowance: in Section C, instead of just "replacement", add the possibility of "repair", at the discretion of the Chief and in Section D, add the sentence "only items damages while performing 'emergency firefighter duties' will be reimbursed."<sup>2</sup>

### Costing Out the Final Offers

There are 30 fire officers in this bargaining unit: sixteen lieutenants, ten captains and four deputy chiefs. The 1994 salaries for these ranks were \$53,240 for lieutenants, \$58,362 for captains and \$69,581 for deputy chiefs. Based on the number of officers in each rank, the 1994 base salaries for this bargaining unit was \$1,713,784. This does not include longevity.

### Argument of the City

The City presented a number of witnesses as well as numerous exhibits to support its position. Witnesses called by the City were Joseph Delgado, City Assessor; Glenn Carter, Director of Community Development; John Miskovsky, Construction Code Official and Robert Rooney, Auditor.

The exhibits introduced by the City were the following:

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|------|---|
| C-1B | City's Final Final Offer  |
| C-2  | February 26, 1992 Memo to Administrator Maloney from Assessor Delgado |
| C-3  | Abstract of Ratables - 1996   |
| C-4  | Abstract of Ratables - 1990   |
| C-5  | Abstract of Ratables - 1991   |
| C-6  | Abstract of Ratables - 1992   |
| C-7  | Abstract of Ratables - 1993   |
| C-8  | Abstract of Ratables - 1994   |
| C-9  | Abstract of Ratables - 1995   |

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<sup>2</sup> The parties' agreed that if the agreements set forth above were not accurate they would resolve them.

C-10A	Comparative Net Valuation - 1990
C-10B	Comparative Net Valuation - 1992
C-10C	Comparative Net Valuation - 1994
C-10D	Comparative Net Valuation - 1995
C-10E	Absolute Change in Net Valuation 1990 - 1995
C-10F	Percent Change in Net Valuation 1990 - 1995
C-11A	Comparative Net Valuation Per Resident - 1990
C-11B	Comparative Net Valuation Per Resident - 1992
C-11C	Comparative Net Valuation Per Resident - 1994
C-11D	Comparative Net Valuation Per Resident - 1995
C-12A	Comparative Equalized General Tax Rate - 1990
C-12B	Comparative Equalized General Tax Rate - 1992
C-12C	Comparative Equalized General Tax Rate - 1994
C-12D	Comparative Equalized General Tax Rate - 1995
C-12E	Absolute Increase in Equalized General Tax Rate 1990 - 1995
C-12F	Percent Increase in Equalized General Tax Rate 1990 - 1995
C-13A	Comparative Percent of Real Property Exempt from Taxation - 1990
C-13B	Comparative Percent of Real Property Exempt from Taxation - 1992
C-13C	Comparative Percent of Real Property Exempt from Taxation - 1994
C-13D	Comparative Percent of Real Property Exempt from Taxation - 1995
C-13E	Percent Increase in Real Property Exempt from Taxation 1990 - 1995
C-14	December 9, 1994 Memo to Finance Director Routel from Assessor Delgado with attachments
C-15	Tax Comparison 1990 - 1996
C-16	Total Assessments - 1997
C-17	Affect on FY'97 Budget Due to Tax Appeals and Loss of Ratables
C-18	Summary of 1994, 1995 and 1996 UCARRS Reports - City of Passaic
C-19A	Municipal Monthly Activity Reports - Permits 1/1-94 - 12/31/94
C-19B	Municipal Monthly Activity Reports - Permits 1/1/95 - 12/31/95
C-19C	Municipal Monthly Activity Reports - Permits 1/1/96 - 10/21/96
C-27	City Proposals for Contract Negotiations
C-35	Property Tax Rates 1992 - 1997
C-36	Historical Trend - Percentage of Tax Collection 1992 - 1997
C-37	Reserve for Uncollected Taxes 1992 - 1997
C-38	1997 Municipal Budget
C-39	Annual Financial Statement for the SFY Year 1996
C-40	Summary of Fund Balances 1992 - 1996
C-41	History of the City of Passaic Fund Balance
C-42	History of Passaic Fund Balance
C-43	Municipal Budget Funding Sources
C-44	History of Revenue Collection 1992 - 1996
C-45	History of Appropriation Reserves 1992 - 1996
C-46	History of Deferred Charges 1992 - 1996
C-47	History of Capital Improvements 1992 - 1997
C-66	February 6, 1997 Certification of Approved and Amended Budget
C-66A	Pension Increases 1995 - 1997
C-66B	Summary Sheets - SFY 1997 Budget
C-66C	Index of Proposal Sheets
C-67	1997 Municipal Budget (Adopted)
C-68	PERC Comparability Guidelines



C-69	Comparative Population - 1994 Estimate
C-70	Comparative Land Area
C-71	Comparative Median Household Income - 1989
C-72	Comparative Per Capita Income - 1989
C-73	Fire Department Budget History
C-74	Fire Department Revenue Sources
C-76	Salary Adjustment Calculation
C-76A	Estimated Lapsed Appropriation Reserve as of June 30, 1997
C-77	Resolution to Amend Budget
C-77A	1996 Budget Information
C-77B	1996 Adopted Municipal Budget
C-78	Fire Department Personnel - 1997
C-80	Bureau of Labor Statistics - Consumer Price Index
C-84	Star-Ledger, January 31, 1997 (Greenspan)
C-85	Star-Ledger, February 15, 1997 (State prison guards)
C-86	CWA OKs 4-year pact amid furor
C-87	CWA's contract seen as model
C-88	Star-Ledger, February 28, 1996 (Union bargaining power)
C-89	October 23, 1996 Letter to Mason from Angera (Supervisory Bargaining Unit)
C-89A	April 3, 1996 Letter to Mason from Angera (White Collar Bargaining Unit)
C-89B	June 5, 1996 Letter to Mason from Spriggs (Local Union 866)
C-89C	April 11, 1997 Memo - City and Firefighters Association
C-89D	Resolution 7693-96 (Supervisory Unit)
C-90A	Schedule of Negotiated Salary Increases
C-91	Passaic City Salaries - Line Graph
C-92	Passaic City Salaries - Comparison of Percent Increases
C-93	City of Passaic Salary Increase Impact Comparison
C-94	Passaic City Longevity Comparison
C-95	City of Passaic Key Benefit Comparison
C-96	Comparative 1994 Maximum - Fire Lieutenant
C-96A	Comparative 1994 Maximum - Fire Captain
C-96B	Comparative 1994 Maximum - Deputy Fire Chief
C-97	Comparative 1995 Maximum - Fire Lieutenant
C-97A	Comparative 1995 Maximum - Fire Captain
C-97B	Comparative 1995 Maximum - Deputy Fire Chief
C-98	Comparative 1996 Maximum - Fire Lieutenant
C-98A	Comparative 1996 Maximum - Fire Captain
C-98B	Comparative 1996 Maximum - Deputy Fire Chief
C-102	Longevity Schedule
C-103	Comparison of Fire Captain Salaries with Longevity - 1994
C-108	Selected Newspaper Articles: Mayor's Clippings

In costing out the proposals, the City used the 1994 base salary for 30 fire officers of \$1,713,784. The City notes that its final wage offer is 6.14% with compounding (6% without compounding) and that the PFOA's final wage offer is 18.65% with compounding (17.5% without compounding). The cost of the PFOA's

wage increase proposal would be \$317,162 over the life of the contract plus an additional \$31,306 for the proposed additional compensation for the lieutenants and captains or a total of \$348,468. The cost of the City's wage offer over the same period of time would be \$91,569. Thus, there is a difference of \$256,899 between the wage components of the two final offers, an amount that, it is claimed, would overburden the already overburdened taxpayers of the City. The average annual difference is over \$70,000 per year.

Additionally, the PFOA is seeking to improve longevity by making officers eligible for a 12% payment at the end of 24 years of service rather than the current 25 years of service. The City notes that the PFOA's financial expert acknowledged that he did not consider the additional cost of longevity or the other increases proposed by the PFOA in his analysis and argues that these additional items must be considered by the arbitrator.

The City, on the other hand, is seeking to eliminate the 14% longevity step for employees now earning 10% or less in longevity.<sup>3</sup> This will bring the PFOA longevity schedule into line with the longevity benefits provided by many other municipalities and with the new longevity schedule accepted by FMBA Local 13 on behalf of the rank and file firefighters.

The cost of the PFOA's proposal to have the 12% level commence at the end of 24 years would add \$1,065 in the case of a lieutenant (12% of \$53,240 = \$6,389; 10% of \$53,240 = \$5,324; the difference is \$1,065.

Other changes proposed by the PFOA also will have a cost impact although it is not always possible to compute this cost until a future date when the benefits are taken. This applies to the sick leave sell-back and the change in the method of

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<sup>3</sup> The PFOA also would eliminate the 14% step but only for new hires.

calculating supplemental compensation. Nonetheless, these items do have a value and a cost and this must be considered by the arbitrator.

The PFOA has proposed two personal days for the officers with these to be deducted from sick leave. While this may seem not to represent a net increase in paid time off, it does have a cost because the officers would use those days and it would be necessary for the City to replace those officers with other officers on an overtime basis. The parties have agreed upon a method of computing holiday payment. Using this methodology, the cost of a day is \$622 (\$1,700,000 divided by 30 officers divided by 91 days). Thus, the cost of two personal days for each of 30 officers would be \$37,320 per year ( $\$622 \times 30 \text{ officers} \times 2 \text{ days}$ ).

The cost of the sick leave sell-back cannot be computed exactly because it depends on sick leave usage. If each of the 30 officers sold back the maximum of 7½ days, the cost to the City would be \$139,950 per year ( $30 \text{ officers} \times 7.5 \text{ days} \times \$622 \text{ per day}$ ).

The proposal of the PFOA would double the cost to the City of the supplemental compensation for retiring officers by making each day work one full day instead of one-half a day. Using the formula set forth in Article XII, Paragraph B of the parties' 1994 agreement, the sample computation applied to the 1994 salary of a lieutenant (\$53,240) who had fifty sick days would see the value of those days increase from \$5,119 to \$10,238. Here, again, the financial impact of this change on the City would be significant, although it cannot be computed precisely without knowing the number of sick days each officer will have and when each will retire.

The City notes that the Arbitrator is required to make a reasonable determination of the issues giving due weight to the statutory factors in deciding this

case, based on the relevance of each factor. The City addressed each criterion in its brief.

The City first looked at comparability. Citing judicial authority, its notes initially that not only are salary comparisons not to be the dispositive factor but the basis for making comparisons must be provided.

The City and the PFOA each offered groups of municipalities for comparative purposes. Based on the fact that they have lieutenants, captains, battalion and/or deputy chiefs and are in the general geographic area, the PFOA proposed Newark, Jersey City, Paterson, Bloomfield, Teaneck, Kearny, Weehawken, Bayonne, Hoboken and Nutley. The City proposed Newark, Jersey City, Paterson, Clifton, Bloomfield, Teaneck, Kearny and Weehawken. The City notes that Clifton is not only contiguous with Passaic but that the two municipalities have a mutual aid pact. The City objects to the inclusion of Bayonne, Hoboken and Nutley because the PFOA failed to provide contracts for those municipalities and the City could not obtain them to verify the comparative data.<sup>4</sup>

While opposing undue reliance on such external comparisons because this leads to whip-sawing, the City asserts that the municipalities which it selected for comparative purposes are based on shared socio-economic and geographic characteristics.

Populations in the City's municipalities range from a high of 258,751 in Newark to a low of 12,208 in Weehawken with Passaic ranked fifth at 56,052. Clifton, Bloomfield, Teaneck and Kearny are all within approximately 20,000 of Passaic in population.

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<sup>4</sup> While I have not used data from those municipalities, the time for the City to have objected to its lack of access to these contracts was during the hearing when the Union would have provided them rather than in its brief.

Passaic's land area, at 3.1 square miles, is less than any of the others except Weehawken (.085 square miles). The one closest to Passaic is Bloomfield with 5.32 square miles and the municipalities range up to 23.81 square miles in Newark and 14.87 square miles in Jersey City.

Median household income in 1989, the last year for which figures have been published, show Teaneck at the top with \$56,598 followed by Clifton at \$39,905, Bloomfield at \$39,822, Kearny at \$37,840, Weehawken at \$34,716, Jersey City at \$29,054, Paterson at \$28,960, Passaic at \$26,960 and Newark at \$21,650.

Per capita figures for 1989 place Passaic seventh at \$11,057, above Paterson (\$10,518) and Newark (\$9,424). Jersey City ranks sixth at \$13,060 and the others are higher.

Turning to comparative salaries, the City notes that in 1994, Passaic's lieutenants ranked second of four: behind Clifton by less than \$600 and above Teaneck by less than \$100 and Bloomfield by over \$2,200.<sup>5</sup> Captains ranked sixth of nine municipalities in 1994. They earned over \$2,000 more than a captain in Newark but over \$5,500 less than a captain in Jersey City or Paterson. Clifton was \$1,900 above Passaic. Deputy chiefs ranked second of four municipalities, behind Jersey City by over \$9,000 in base pay but above Teaneck by \$1,600 and Clifton by over \$2,000.

The City asserts that its fire officers should not expect to be the highest paid officers in the area although the City agrees that it does not expect the PFOA membership to accept being the lowest paid in the area. It contends that its offer will maintain the city's ranking.

The comparative analysis also must include an examination of the salaries and wages of other City employees. The City points out that generally uniformed

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<sup>5</sup> The City pointed out that not all of the municipalities had the rank of fire lieutenant.

employees have received larger salary increases than other City employees and that this will continue under the City's wage proposal. Other City employees have reached agreements with the City which provide wage increases for the next two or three years of 1.17% to 1.5%. The City's somewhat larger offer to the PFOA results in an even greater disparity when converted to dollars because the fire officers earn considerable more than other City employees. For example, an employee who earned \$50,000 would get an increase of \$4,170 over the first two and one half years as proposed by the City whereas a \$30,000 per year employee would receive \$2,502 during that term. Furthermore, the City settled with the other groups for less than it offered the PFOA. Under the actual settlements, a \$30,000 employee would receive \$2,115 over three years under the Local 866 agreement, \$2,116 under the PCEA agreement over three years and \$1,357 under the PCSA agreement over two years. Thus, the differences are magnified.

While the PFOA is seeking to improve its longevity benefits, the City is going in the opposite direction. The City's blue collar, white collar and supervisory employees hired after December 31, 1995 will receive no longevity. The City and the FMBA agreed to change the longevity schedule for firefighters as the City has proposed in this case: the elimination of the 14% step for all employees not now receiving either 14% or 12%. The City also wants to eliminate longevity altogether for new hires.

The City observes that the PFOA members receive 360 hours of annual sick leave allowance (15 days x 24 hours). This is far more than any other City employees. Police officers receive 160 hours (20 days x 8 hours per day), Local 866 employees receive 120 hours (15 days x 8 hours) and the other City employees receive 105 hours (15 days x 7 hours). Also, other City employees who have settled with the City have

agreed to health insurance concessions which, because of the decrease in rates under the State Health Benefits Plan, the City is not even seeking from the PFOA.

Finally, the City contends that the salary increases received by other employees generally should be considered and it cites the two-year salary freeze negotiated by the State of New Jersey with its employee organizations. The City asks also that the arbitrator take note of the layoffs, downsizing and give-backs which employees in the private sector in New Jersey have experienced. In short, the City contends that its offer to the PFOA exceeds increases granted to State employees and to other employees generally.

Another factor to be considered is the cost of living. The City notes that between 1988 and 1994, the CPI increased by 36% whereas salaries of fire officers increased by 61.32% during that same period. Thus, the salary increases received by the fire officers have exceeded cost of living increases and, as another exhibit demonstrates, the increases received by other City employees. Between 1988 and 1997, Local 866 employees received increases of 48.44% and PCEA employees received 42.74% whereas the CPI increased 46.97%. Thus, those groups essentially matched increases in the cost of living but the salary increases received by fire officers greatly exceeded them.

The City's final offer is said to exceed increases in the cost of living and is more in line with the current national economic climate. An increase of 1.5% covering the period January 1, 1995 through June 30, 1995 exceeds the 1.07% by which the CPI increased in that period and the 1.5% offered July 1, 1995 is said to match the CPI increase for that period. Furthermore, citing Federal Reserve Board Chairman Alan Greenspan, the City asserts that the CPI overstates increases in the cost of living by approximately 1.1% per year. Additionally, the medical care and services component,

from which these employees are protected, has accounted for about 40% of the CPI increase in the last ten years.

Next, the City addressed the financial impact on the governing units, its residents and taxpayers. Citing the Supreme Court's decision in Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), the City points out that "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." Just because it could come up with the money without being financially crippled does not mean that the money sought by a union must be given to the employees.

As the City's witnesses testified, while the City's financial picture is brighter than it was a few years ago when it was truly bleak, the City has not fully turned the corner. The City has to be very precise in its budgeting and conservative in its financial practices to ensure that its fiscal house is in order. A long-term perspective is required. The PFOA financial expert contends that the City can use surplus to meet the demands of the PFOA and he cited the City's ability to regenerate surplus. The City, on the other hand, believes that the PFOA offer would have a significant negative impact on the City's finances and the residents and taxpayers. The Union's expert admitted that he had not calculated the cost of the PFOA demands and had just done a ballpark estimate. The City asserts that it has been prudent in preparing its current budget in an effort to do three very important things: maintain existing municipal services, grant fair salary increases and reduce the tax burden.

In fact, at the evidence demonstrated, there have been substantial budget cuts and revenues have been anticipated to or close to the legal maximum. Revenue sources have been maximized. The City anticipated the maximum permissible tax collection rate of 93.48% which is the rate of actual collections in 1996. This leaves no



cushion in the event of a falloff in tax collection. This high figure was used in order to keep the tax rate as low as possible to minimize the impact on the taxpayers. The City has used surplus funds to reduce the tax rate which is an aggressive effort to keep the tax rate as steady as possible. Even the Union's expert agreed that the City was unlikely to generate as much surplus this year as it has in the past several years because the City's budget has been based on realistic assumptions which will not lead to a regeneration of surplus.

The City notes that it has gone from an operating deficit a few years ago to the point where, with careful revenue and expenditure projections, the budget will not be in deficit at the end of the year. However, the use of additional surplus funds to pay for the salary increase proposed by the PFOA would be unjustified and have a severe negative impact on the City's fiscal affairs.

The City notes that its taxpayers already pay the highest local tax rate in the County and that the municipal portion of that rate is approximately double the rate in many other communities.

A review of the overall compensation received by the fire officers, which is another statutory factor, indicates that these employees receive and sometimes exceed benefits received by other City employees and fire officers in comparable communities. The City cites longevity which reaches a maximum rate of 14% after 30 years in Passaic. Only Jersey City with 16% has a higher rate and most of the municipalities top out at 10% or 12%. The impact of this benefit can be seen when salary plus longevity is considered. A fire captain with 30 years of service in Passaic ranked fifth whereas without longevity that captain ranked sixth in the nine municipalities.

The interests and welfare of the public is another very important factor which must be considered. Municipal employees, including fire officers, should be paid only

what the City can reasonably afford. Passaic has struggled to balance the level of services and staffing levels while fairly compensating its employees. It should not be compelled to reduce service or staffing in order to fund additional salary increases for fire officers. The City's bare bones budget will not permit a greater salary increase and even then, important programs were not adequately funded. There is no money in the 1997 budget for capital improvements. Tax appeals have already cost \$500,000 which was the amount budgeted. As the newspaper articles which were submitted reflect, the City's residents want the budget reduced and they want the tax burden reduced. Spending must be brought under control if taxes are to be reduced. The City must not be compelled to raise taxes at this time to cover the costs of the PFOA proposal.

The only stipulations were the five items agreed to by the parties and discussed above and the fact that the Union's financial expert did not cost out the PFOA's non-salary proposals.

The City does not contend that the Cap is an issue in these proceedings.<sup>6</sup> There are no legal impediments which would prevent the City from paying what the PFOA has proposed. There are, of course, many reasons why this should not be done but the Cap is not one of them.

Finally, continuity and stability of employment have been achieved after some staff reductions four or five years ago which were necessary to improve efficiency and reduce costs. The City asserts that it does not contemplate any layoffs. It also notes that while the PFOA made a number of arguments relating to the City's decision to eliminate the position of battalion chief, the fact is that the fire officers are operating within Civil Service job descriptions.

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<sup>6</sup> This is a reference to the Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq.

The City asserts that its economic offer is fair and reasonable in light of the salary increases it has negotiated with other unions as well as the City's financial condition. The increases offered exceed those recently given to State of New Jersey employees and to employees in the private sector in New Jersey who also have experienced layoffs, pay freezes, etc. The increases exceed the increases received by other City employees. The increases are in line with cost of living increases and national economic trends. The PFOA's offer exceeds that of the City by over \$250,000 without considering the other things that the PFOA's expert did not even calculate. The City has one of the highest local tax rates in the County and taxpayers who are among the poorest. The tax burden must not be increased on those people in order to provide greater increases to fire officers. Such increases simply cannot be afforded. The City asks that the arbitrator determine, based on the evidence, that the City's offer is the more reasonable and that it be awarded in its entirety. Additionally, the five other agreed items should be included in the award.

#### **Argument of the PFOA**

In support of its position, the PFOA provided testimony from Edmund Sieper, President; Joseph Schwartz, Treasurer; Louis Imparato, Fire Chief; and Dr. Robert Werner, financial expert.

The exhibits introduced by the PFOA were the following:

A-0a	Second Final Offer of PFOA
A-1	Population - 1994
A-2	Persons Per Square Mile
A-3	Total Debt
A-4	Percentage of Real Property (Non-Residential)
A-5	Median Value Single Family Home
A-6	1994 Salaries
A-7	1995 Salaries
A-8	1996 Salaries
A-9	Longevity

A-10	Terminal Leave/Sick Incentive
A-11	Leave of Absence (Bereavement and Personal Days)
A-12	Holidays
A-13	Vacation
A-14	Summary of Benefits - Passaic PBA Local 14
A-15	Wages: Police v. Fire
A-16	IAFF 1994 Death and Injury Survey
A-17	Newspaper Article - Population change
A-18	Newspaper Article - How did you do this year?
A-19	Labor Relations Reporter - Median First Year Pay
A-20	Newspaper Article - Jobless rate fell
A-21	Newspaper Article - Jersey jobless rate falls
A-22	Newspaper Article - State jobless rate falls
A-23	Interest Arbitration Award of Arbitrator Scott Buckheit in the matter of <u>City of Passaic and Fire Officers Association</u>
A-24	February 22, 1994 Memo from Imperato to Mayor Semler
A-25	June 1995 Memo Re: 1995 Anticipated Life Hazard Use Fee Payments
A-26	August 1, 1994 Memo from Routel to Business Administrator Robert Czech
A-27	Sick Days
A-28A	Dispatcher's Worksheet - June 23, 1994
A-28B	Fire Incident Report - October 7, 1994
A-28C	Fire Incident Report - September 14, 1995
A-29	Curriculum Vitae - Robert H. Werner
A-30	Sheet 39, 1997 Budget
A-31	Sheet 30, 1997 Budget
A-32	Sheet 19, 1996 Annual Financial Statement
A-33	Sheet 20, 1996 Annual Financial Statement
A-34	February 26, 1997 Letter to Imperato from Sieper
A-35	Page 19, 1995 Audit
A-36	Sheet 17, 1997 Budget
A-37	Sheet 3b, 1997 Budget
A-38	Sheet 3, 1997 Budget
A-39	Newspaper Articles: Amid flames and Passaic fire destroys apartment

In its brief, the PFOA reviewed the evidence in light of the statutory criteria and argued that it supports an award of the PFOA's final offer in its entirety. It cites the legislative recognition of the unique and essential duties which are performed by police officers and firefighters and the life-threatening dangers they face as well as the public benefit in high morale for the employees and the efficient operation of the fire department. N.J.S.A. 34:13A-14. Like the City, it emphasizes that the arbitrator is required to clearly define in the opinion and award the criteria relied upon and the

supporting evidence with a discussion of the statutory criteria and the weight accorded to each criterion and the reason for the decision.

The first criterion is the interest and welfare of the public. The PFOA observes that Passaic is a multi-ethnic community in Passaic County with a population of 56,042. It is one of the most densely populated communities in the State and this creates exceptional hazards and places additional demands on the members of this unit. This is exacerbated by the type of construction. Many of the homes were built in the late 1800s or early 1900s and are wood frame with abutting roof tops. In this configuration, even routine fires can pose a deadly threat. Also, there are many multi-family high-rise buildings with a large number of tenants, some of whom are not legal occupants. There are numerous Fire Code violations based on over-crowding. This makes it even more difficult for firefighters to locate and remove people from burning buildings.

The City eliminated six battalion chiefs in 1994. They had been represented by the PFOA. This action caused the work which had been performed by battalion chiefs to be divided among the remaining employees. This also drastically impacted upon fire scene operations.

While the City argued that its proposal was in the public interest because it costs less than that of the PFOA, the PFOA points out that cost is not the only consideration. If it were, the law would require the arbitrator simply to select the least costly proposal. A fair and competitive compensation package also is essential in the public interest to protect against labor unrest, promote morale and assure superior work performance.

The PFOA takes particular exception to several of the City's proposals as being contrary to the public interest. Its proposal to create a three-tier longevity system is said to be totally unjustified and contrary to the provisions in contracts with the City's

other public safety employees. The sick leave reduction proposed by the City would result in a drastic reduction for both current employees and new hires. The City provided no explanation for its proposal to eliminate family sick leave.

The PFOA cites the 1994 IAFF survey which concluded that firefighting is the most dangerous occupation with firefighters being 4.5 times more likely to be injured on the job than are private sector employees. Additionally, firefighters as a group are prone to fall victim to job related infirmities such as lung disease and cancer as well as mental stress. Disability and early death are the statistical norm in this profession. Danger is constant for these employees who cannot know if they will return home at the end of each tour.

The PFOA notes that the City and its residents derive great benefit from the efforts of the Fire Prevention Bureau, now headed by Captain Sieper but headed by a battalion chief prior to the elimination of that position. The Bureau's main purpose is to reduce fires by enforcing the code. Inspections and education are provided. This activity is financially self-sustaining because the money generated through penalties and fees exceeds the Bureau's operating costs.

As dramatic evidence of the environment in which these officers work, the PFOA refers to the fire in May 1997 in which six young children were lost in a devastating fire which consumed an apartment building. There have been other deadly fires as well. The members of the bargaining unit risk their lives and their families' futures in serving the public interest. The value of this service is very difficult to quantify because of the value of human life but the PFOA asserts that its proposed compensation package would fairly reward these employees as they risk their lives serving the public interest and protecting the lives and property of the residents and taxpayers of the City. On the other hand, acceptance of the City's proposal would have

a devastating effect on the morale of these officers and would undermine the public interest.

The second criterion deals with comparisons and the PFOA addressed this area at length. It asserted a need for the arbitrator to fully understand the work and duties required of the members of this unit in order to compare these employees with those in the public and private sectors.

There are 31 members in the unit<sup>7</sup> which consists of four deputy chiefs, ten captains and 17 lieutenants and two firehouses in the City, each of which has two engine (water) companies and one truck (ladder) company. Until their elimination, four of the six battalion chiefs were in combat with responsibility for one of the firehouses with a deputy chief being responsible for the other one. The other two battalion chiefs were in charge of training and the Fire Prevention Bureau. These duties now are performed by captains. The officers who were assigned the duties and who absorbed the duties formerly performed by the battalion chiefs did not receive any additional compensation when they took on the extra duties and responsibilities.

Supervision and record-keeping formerly performed by battalion chiefs now is performed by captains and lieutenants. Significantly, battalion chiefs used to be the internal commanders at fire scenes with a deputy chief in overall charge on the outside. The two chiefs could communicate and coordinate activities in the interests of the safety of the firefighters and people inside the building as well as in efforts to extinguish the blaze. In a letter to the Mayor, Chief Imparato indicated that he was "unequivocally opposed to the elimination of any rank within the Fire Department" and that the loss of battalion chiefs "will drastically impact on fire scene operations." The problem is compounded when there are two fires simultaneously. Lieutenants are routinely

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<sup>7</sup> One lieutenant either has retired or is out on long-term disability.

performing duties and assuming responsibilities previously done by battalion chiefs, as reports introduced by the PFOA indicate. The Chief testified that staffing levels are below those recommended by the National Fire Protection Association ("NFPA") and this means that fewer employees are performing more work. This should be recognized in the form of additional compensation which is the reason for the PFOA's proposal for an adjustment for captains and lieutenants based on an increase in workload. The amounts proposed are very modest: 1% in 1995, ½% in 1996 and ½% in 1997.

It is in this context, argues the PFOA, that the arbitrator must compare these fire officers with other employees in the public and private sectors.

The PFOA submitted wage data, to the extent that it was available, on lieutenants, captains and deputy chiefs from eight other communities. The municipalities were Jersey City, Paterson, Kearny, Bayonne, Weehawken, Bloomfield, Teaneck and Newark. There are captains in all eight communities and Passaic's 1994 salary of \$58,362 ranked fifth above Bloomfield, Teaneck and Newark and behind the others.<sup>8</sup> Passaic also was below Clifton which was a municipality used by the City in its comparative analysis. The PFOA contends that all of the communities have the rank of battalion chief (although it provided wage data from only three other communities).

Under the City's proposal, by July 1995 captains would earn \$60,113 which would place captains below those in Jersey City, Kearny, Weehawken and Bloomfield. In fact, a captain in Passaic would be the second lowest paid ahead only of Teaneck. The same would be true in 1996. Captains would be \$1,800 below the average. On the other hand, the PFOA asserts that its proposal would result in wages which are consistent with those received by captains in other jurisdictions. The PFOA makes

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<sup>8</sup> I have excluded Bayonne as discussed above.



essentially the same arguments for lieutenants and deputy chiefs, asserting that the City's offer would result in a decline in the relative position of the officers whereas its proposal retains their position. While it would not catapult the officers to the top, it would prevent them from drifting to the bottom. The result is especially stark for deputy chiefs, based on the limited available evidence.

The salary adjustments for lieutenants and captains proposed by the PFOA not only take into account the fact that these ranks assumed additional work and responsibilities but that the City realized substantial savings in salaries and benefits by eliminating battalion chiefs, laying off unit members, and also through its early retirement program which resulted in the retirement of a number of senior employees.

The savings realized from these programs would more than cover the costs of the PFOA proposal. The six battalion chiefs had a combined salary of \$376,344 in 1994. A 1% increase for this bargaining unit costs \$14,884.<sup>9</sup> The cost over the three years of the PFOA adjustment is under \$30,000 whereas the City saved over 12 times that in salary alone in 1995.

The PFOA has elected to cut its longevity benefit for new officers (without affecting current personnel) but at the same time, it wants to make employees eligible for the 12% payment after 24 as opposed to 25 years of service. This will create an incentive for employees to retire when eligible after 25 years and therefore will be advantageous to the City. The PFOA submitted evidence which shows that six of ten surveyed communities commence longevity payments after four years of service. In Passaic, the benefit begins after five years of service. Also, the payment starts at 4% in Weehawken as opposed to 2% in Passaic. The City's evidence also showed that the longevity benefits are superior in Hoboken and Jersey City compared to Passaic. The

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<sup>9</sup> The PFOA used 31 unit members in its computations.

top rate in Clifton and Paterson is reached after 24 years and in Weehawken it is reached after 19 years. These differences tend to magnify the salary differential discussed above and further illustrates that the City's wage proposal cannot be justified.

There is said to be no support for the City's proposal to eliminate longevity altogether for new employees. No evidence was introduced that any other municipality had eliminated longevity for uniformed personnel. The City's longevity agreement with the rank and file firefighters did not eliminate longevity for new hires. Additionally, the City is said to have provided no reason to eliminate the 14% longevity step for current employees now earning longevity of 10% or less. The creation of a two-tier system would be very bad for the morale of employees who work side-by-side in life-threatening situations.

The PFOA seeks to be able to have its members sell back to the City one-half of their unused sick time up to seven and one-half days per year. This will provide an incentive for members not to use sick leave. It also permits the City to pay for sick leave at current rates of pay rather than at future rates, thereby producing savings for the City.

To the City's proposal to drastically cut sick leave benefits, the PFOA responds that a reduction is not mandated by Civil Service, which only speaks to minimum requirements and not maximums, and that Civil Service is not the standard to be applied in interest arbitration proceedings. The PFOA argues that its members receive the same benefits as other City employees and less than the police officers receive. Thus, they receive 15 paid sick days per year. The PBA's members receive 20 days per year. It is said to be deceptive to convert days into hours. The PFOA points out that in this bargaining unit, only 141 of 450 available sick days were used in 1994 and

143 sick days were used in 1995. Thus, abuse of sick leave is said not to be a problem.

The PFOA also proposes to increase the terminal leave incentive by increasing the value of accrued sick leave. This, too, will provide an incentive for members not to use sick leave and it will permit enhanced retirement earnings. Productivity will be increased and absenteeism reduced. The PFOA cited various arrangements in other municipalities whereby employees receive benefits based on years of service, perfect attendance, a flat number of days, etc. Also, the police superior officers in Passaic enjoy the same benefit as that sought by the PFOA. There is no justification for the two groups to be treated differently.

The PFOA points out that the City provided no reason for the elimination of family sick leave and argues that it would be counterproductive to adopt this proposal. It applies only when the attendance of the officer is required. To require an officer to work under such conditions would risk that officer's safety as well as that of other firefighters and the members of the public.

Similarly, the City provided no justification for its proposal regarding doctor's notes after three incidents of illness. This, too, must be rejected.

The PFOA is seeking two personal days per year with these to be deducted from sick leave. It notes that Kearny, Newark, Teaneck and Bayonne provide personal days to their firefighters and the City provides two personal days to its other organized employees.<sup>10</sup>

The PFOA asserts that its members receive less favorable benefits than many of their counterparts. Bereavement leave is one such area. Holidays is another with

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<sup>10</sup> Members of the PBA receive one personal day.

unit members receiving only seven holidays whereas most receive double that number. Vacation benefits also are said to lag in Passaic.

Turning to internal comparisons, the PFOA refers to PBA Local 14<sup>11</sup> as most comparable. That is a public safety unit with a similar chain of command. Its members are charged with preserving the lives and property of the residents of the City and they face life-threatening situations. Nevertheless, the fire officers receive a lower compensation package than that received by PBA Local 14 members. Thus, a fire lieutenant earned \$9,352 less in 1994 than did a police lieutenant. For captains, the situation was similar. Furthermore, the police officers receive three more vacation days, one more bereavement day and one more personal day. Additionally, there would be a significant difference in longevity if the City's proposal were to be awarded. This gap between the fire officers and the police superiors and its further widening cannot be justified.

The PFOA argues that because the wages of fire superiors lag behind those of police superiors, the City has not been consistent in arguing that internal comparisons are more important than external comparisons. If the City were consistent, the two groups would have the same salaries and benefits. In this regard, the PFOA cites the opinion of Arbitrator Buckheit in his July 6, 1992 decision, Docket No. IA-91-195, involving these parties. Buckheit stated: "More specifically, it is undisputed that the fire officers are paid 3.2% less than their police superior counterparts. There is not before me justification for this gap in pay. Notably, there is no gap in pay between firefighters and their police officer counterparts." (at 7) The City's wage proposal would further widen the gap and this cannot be justified any more now than it could be when Buckheit considered this issue.

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<sup>11</sup> PBA Local 14 represents both rank and file police officers and superior officers.

The Union rejects the City's comparisons of fire officers with the City's blue collar and white collar work force. The differences in training, job-related hazards, years of service, level of supervisory and other duties make such comparisons meaningless.

Additionally, according to the PFOA, fire superiors have no private sector counterparts. Therefore, it argues, comparisons cannot be made. Firefighters combine certain aspects of the jobs of chemist, scientist, engineer, clergyman and psychologist but overall comparisons are said not to be relevant.

Based on its analysis of the comparative data, the PFOA urges acceptance of its final offer and the total rejection of the City's offer.

The third factor is overall compensation. This was discussed in connection with the comparative review provided above. The PFOA reiterates that in several areas, both internally and externally, its benefits do not compare favorably. The fact that unit members are now performing the duties previously performed by battalion chiefs is said to make the City's proposals even less reasonable and those of the PFOA more so. The City acknowledged that its health insurance premiums under the State Health Benefits Program have been reduced.

The PFOA stipulated that Dr. Werner did not review all of the economic proposals contained in the PFOA's offer.

Lawful authority is the next factor which an arbitrator is required to consider and this includes the Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq. As Dr. Werner testified, following his thorough review of the City's financial data, the City has the lawful authority to meet the wage increases proposed by the PFOA. The City has been able to regenerate over \$2 million in surplus in 1994, 1995 and 1996. Thus, the City is regenerating surplus. Also, the City has an adequate fund balance which

exceeds the 5% rule of thumb figure generally applied by the municipal rating agencies by over \$400,000. Dr. Werner conservatively projected that the City would realize approximately \$600,00 in SFY 1997 as a result of lapsing of monies budgeted but not spent in prior years. He also pointed out that the City obtains revenue from miscellaneous revenues not anticipated ("MRNA"). Because these revenues were not included as revenues in the budget, they are what Dr. Werner described as a "hidden surplus" which is available to replenish surplus. The City had over \$700,000 of MRNA in SFY 1996 and many of these items are recurring. Dr. Werner also noted that the City's tax collection rate is improving which has made it easier for the City to raise funds. The rate was 93.48% in 1996 which is its highest rate in some years. The tax collection rate was 91.29% in 1993 and 90.39% in 1994. While the City budgeted the maximum anticipated rate in its 1997 budget, this was reasonable in light of the fact that the rate has been increasing. Finally, the City used 3% of its Cap in 1997. It could have gone up to 5%. By failing to do so, the City banked the difference. Thus, the City has \$3.8 million to be carried into 1998 as a result of Cap banking. The legal availability of this money makes it obvious that there are no impediments to the lawful authority of the City to meet the proposals of the PFOA.

The next factor is the financial impact on the governing unit, its residents and taxpayers. The PFOA asserts that the city can meet the PFOA's proposals without unduly burdening the residents and taxpayers. This is said to be a typical urban community. The median value of a single family home is \$165,100, very similar to Kearny, Bayonne and Bloomfield and above that in Paterson, Jersey City and Newark. The improving tax collection rate is said to demonstrate the fiscal health of the community. The City has been able to reduce its tax rate over the last several years, thereby providing relief to taxpayers. This also has permitted the City to budget less in

its reserve for uncollected taxes. The continuing generation of surplus indicates that the City should be able to hold taxes steady. Also, the City has been unusual in that it, along with Wayne, has seen an increase in its net valuation between 1991 and 1995. Other communities in Passaic County saw a decrease. The City acknowledged that it receives an unusually large amount of State aid for its schools which keeps the school portion of the tax low and this helps to limit the overall rate.

Except for 1996 when the unanticipated costs of the blizzard required additional spending, the City has no record of overspending in its accounts in the last three years. The City's last significant deficit in operations was in 1993 and there is no evidence that this will be repeated during the term of the contract now being arbitrated.

As noted above, the Fire Prevention Bureau is self-sustaining and generates more than enough revenue to pay the salaries of the inspectors, computer specialist and secretary. Thus, the City realizes revenues while at the same time experiencing a safer community as a result of the efforts of the Bureau in ensuring code compliance.

The Fire Department's share of the municipal budget has actually decreased since 1993 when it was 15% of total general operations. The budgeted amount in 1997 is 12.75%. The amount spent on salaries will be slightly less in 1997 than it was in 1993. The fact that the City has been budgeting tightly does not mean that it is in a weak financial condition. It only means that it is doing a good job in controlling spending.

There is said to be no support for the City's expressed concern that an award in favor of the PFOA would result in senior citizen taxpayers losing their homes. There has been an improvement in tax collection in recent years. Additionally, a one cent increase in the tax rate generates \$133,000 in revenue. The first year increase proposed by the PFOA is only \$103,000. The City's health insurance premiums have

gone down. Most of the tax appeals following the revaluation have been settled and two large appeals were withdrawn recently. Thus, the costs associated with tax appeals are likely to decrease. Also, the City could use bonding to meet the cost of tax appeals. The City is undergoing some development which, even though subject to tax abatement, still will result in the receipt of revenues from properties where none had been received. As Glenn Carter, Director of Community Development, testified, the City is actively seeking to attract new businesses and anticipates continuing successes in this area. This leads to increased tax receipts. The City also receives State and Federal grants

Thus, the PFOA argues, its proposals, if awarded, will not have a negative impact on the governing unit, its residents and taxpayers.

Cost of living is the next factor. The Union cites the reduction in unemployment nationally to 5.1% in 1996 and a corresponding reduction in New Jersey. The per capita income in New Jersey is the second highest in the country. The CPI has increased steadily in the last ten years and, according to the PFOA, the City's wage proposal would result in a decline in purchasing power for the members of this unit.

Finally, continuity and stability of employment will not be jeopardized by the PFOA's proposal. It is necessary for the City to compensate employees at a level which will attract employees and cause them to remain rather than to seek alternate better paying and less hazardous employment. The City should not serve as a training ground. Morale also must be considered in assessing the two proposals. The PFOA package should be awarded to avoid a defection of officers.

Accordingly, the PFOA urges the arbitrator to award its final offer in totality and to reject the final offer of the City in totality.



## Discussion and Analysis

The arbitrator is required to decide a dispute based on a reasonable determination of the issues, giving due weight to the above-quoted statutory criteria which are judged relevant. Each criterion must be considered and those deemed relevant must be explained. There also must be an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence presented by the parties as well as their arguments. As set forth fully below, I have considered this evidence in light of the statutory criteria by which I am bound. I have considered each criterion and found them all to be relevant. I have discussed the weight I have accorded to each factor. I also have determined the total net annual economic changes for each year of the agreement in concluding that these changes are reasonable under the criteria.

In order to provide a basis for understanding this analysis, I shall set forth the award and the total net economic changes for each year thereof at this point. This will permit the reader to follow the analysis which led to that award.

I have determined, based on the evidence and the arguments of the parties, that salaries should be increased by 1.5% effective January 1, 1995, an additional 3% effective July 1, 1995, an additional 3% effective July 1, 1996 and an additional 3% July 1, 1997. Additionally, effective April 11, 1997, longevity should be changed to conform to the agreement reached by the City and the FMBA,<sup>12</sup> as proposed by the City, with the further change of making the 12% step payable after 24 years of service. Finally, sick leave for officers who work 24-hour shifts should be reduced, effective January 1, 1998, to ten 24-hour days for current employees and to eight 24-hour days for new employees (which the parties agree means newly hired employees as opposed

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<sup>12</sup> This agreement was signed April 11, 1997.

to new members of this bargaining unit.) I have rejected all other proposals of the parties for the reasons hereinafter set forth.

I requested the parties' in their briefs to specify the method of costing out their offers. Both proposed utilizing the 1994 base salaries of the unit members. The City based its calculations on 30 officers: four deputy chiefs, ten captains and sixteen lieutenants. Their 1994 salaries, excluding longevity, were \$1,713,784. I have used that figure in determining the total net economic change in each year of the agreement.

The term of the new agreement, as proposed by both parties, will be three and one-half years, January 1, 1995 through June 30, 1998. This will put the contract on a State Fiscal Year ("SFY") basis as requested by the City. I have timed the salary increases so that the final increase will take place on July 1, 1997 or one year before the agreement will expire. Therefore, there will be no rollover costs into the successor agreement.

A salary increase of 1.5% effective January 1, 1995 would cost \$25,707 for twelve months, bringing the base to \$1,739,491. This rate, however, will be in effect only for six months or until the end of FY1995. Thus, the cost in FY1995 will be \$12,854. There will be an increase of 3% effective July 1, 1995. That will cost an additional \$52,185. With the rollover of \$12,853 from the previous six months, the annual cost in SFY 1996 will be \$65,038 ( $\$52,185 + \$12,853$ ) and the base will be \$1,791,676. There will be another increase on July 1, 1996. This will cost \$53,750 in SFY 1997 and bring the base to \$1,845,426. Finally, there will be a 3% increase on July 1, 1997 which will cost \$55,363 in SFY 1998 and bring the base to \$1,900,789. These figures exclude the added costs of longevity, pension and other items which are directly connected to salary costs. They also assume that no employees are hired and no employees retire.

Thus, the total annual net economic change in the first six months of the agreement or the last half of SFY 1995 will be \$12,854; it will be \$65,038 in SFY 1996; it will be \$53,750 in SFY 1997 and it will be \$55,363 in SFY 1998.

The change in the longevity will save the City money but, except for the unknown effect of causing officers to retire earlier than they otherwise would have, not during the term of this agreement. It does not affect employees now receiving 14% longevity nor those now receiving 12% longevity who will be eligible to receive 14% after 30 years of service. Employees now receiving 10% or less in longevity will receive 12% after 24 years of service - which will be one lieutenant and two captains in 1997 and one lieutenant in 1998 - but they would not have been eligible for 14% until after this contract expired. Thus, there is a potential long-term savings to the City, although that savings will only be realized on employees who leave the job earlier than they otherwise would have plus a direct savings on those who remain on the job over 30 years.

The change in the sick leave benefit, effective prospectively January 1, 1998, is potentially significant. First, it will affect new hires by reducing their sick days to eight 24-hour days per year. This can save a large amount of money both in terms of sick leave and supplemental compensation upon retirement which is based on accrued sick leave. Obviously, with fewer available sick days, fewer such days will be accrued so the supplemental compensation may be less, although with the current cap of \$18,000 on this benefit, employees still may accumulate sufficient time to earn the maximum benefit. Second, the change for current employees to ten 24-hour days will have an immediate impact, at least potentially. In 1994, two members of the unit used over ten sick days and in 1995, three members used over ten days. Thus, few unit members would have exceeded even the reduced sick leave allotment in those years and

presumably those who did had accumulated days from prior years. In that two year period covering 1994 and 1995, only two officers used as many as 20 days. This reduction may reduce the use of sick leave and the need to call in another officer and it also may have an impact on supplemental compensation upon retirement.

While I cannot place a value on this change, I recognize that it is significant both to the City and to the employees represented by the PFOA and that the savings associated with it will help the City meet the additional costs I have imposed in the wage component of the award.

I turn now to a consideration of the statutory criteria which I shall discuss sequentially.

**Interests and Welfare of the Public** The statute specifically requires the arbitrator to assess the limitations imposed on the City by N.J.S.A. 40A:4-45.1 et seq. when considering this factor. As set forth more fully in the Lawful Authority section, N.J.S.A. 40A:4045.1 et. seq. is not significant in deciding this case. There are no Cap constraints. Accordingly, I shall consider other aspects of the interests and welfare of the public.

In the absence of Cap constraints, the interests and welfare of the public require a trained, professional and committed fire service staffed with enough employees to provide a reasonable level of protection in fighting and preventing fires. This interest will be furthered by having a group of employees whose level of total compensation contributes to their morale and belief that their function and the dangers inherent in their work are recognized and respected. At the same time, those interests are best served by obtaining these services at the lowest cost which is consistent with these interests of the fire officers. This is even more true in Passaic than in a more affluent community where the taxpayers are more wealthy and where the tax rates are lower.

A force of a certain size is required to provide the necessary services and the PFOA introduced evidence which suggests that, at least by the standards of the NFPA, there are not as many paid firefighters as would be desirable. This suggests the need for more officers but this would increase the City's costs. At the same time, the firefighters who are employed will perform more effectively and the City will be able to attract a higher caliber of officer if its compensation package is competitive. Thus, these elements point in different directions. The lower the compensation received by an officer, the more officers the municipality can afford to employ and the better its fire protection will be. On the other hand, if its compensation is not competitive, it will not be able to attract the highest quality fire officer and morale will be jeopardized.

This City only recently has emerged from a period of extreme fiscal difficulty in which it failed to balance its budget as required by law. As discussed more fully in the Financial Impact section, the City's efforts to get control of its budget while still maintaining services and to bring down municipal taxes should be respected. In this case, fiscal responsibility is more than a taxpayer and political desire to minimize taxes; it is required to obtain stability and promote development which is needed to support future increases in expenditures including future salary increases. The City's careful budgeting in the last several years represents a commitment to fiscal responsibility which it would not be in the interests and welfare of the public to jeopardize.

A salary increase which averages 3% annually over the term of the agreement, as I shall award, is a figure which recognizes the contradictory directions in the above elements of the public interests and which reflects the desire and need of the employees for a reasonable level of compensation while also reflecting the need of the public for a sufficient number of fire officers to provide the needed services as well as the public desire for obtaining these services at a reasonable cost. There is no reason

to believe that this award will jeopardize the different aspects of the public interests as discussed above.

**Comparisons** This criterion has three sub-parts and the third of these has two components: private employment in general, public employment in general and public employment in the same or similar comparable jurisdictions. I shall discuss each of the three.

Neither party elected to submit specific data on private employment. The City made some general statements alluding to layoffs and downsizing in the private sector and the PFOA asserted that no private sector employees were really comparable to fire officers.<sup>13</sup>

I agree with the PFOA that there are few if any occupations in the private sector which compare with that of fire officers. Nonetheless comparisons between private employment and fire officers are meaningful. Not only are such comparisons explicitly required by the statute but they are important because wage increases in the private sector are based upon economic realities of profit and loss, the ability to compete and stay in business, etc. In the public sector, subject to the constraints imposed by the Cap Law, taxes can simply be raised to pay for increases in salaries. Thus, it is well accepted that wages in the private sector should serve as a benchmark for public sector wages.

The fact no occupation closely matches that of a fire officer does not mean that comparisons are not possible. There is a relationship among jobs which can be determined by comparing the salaries of the two jobs. That relationship presumably reflects the factors in each job which cause that job to receive a certain salary. The

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<sup>13</sup> The PFOA alluded to chemists, scientists, physicians, psychologists, engineers and architects but provided no wage data on which comparisons could be made.

relationship will be maintained if the salaries of both jobs increase (or decrease) by the same percentage. For example, if one job is paid \$30,000 and another job is paid \$50,000, the relationship between those two jobs will be maintained if both receive increases of 3% so that the \$30,000 job goes to \$30,900 and the \$50,000 job goes to \$51,500. In the aggregate, an overall figure for private employment increases reflects what is occurring in that dominant sector of the economy and provides a useful indicator in determining appropriate public sector wage increases.

Presumably to assure the availability of private employment wage data as well as to assure that arbitrators consider comparisons in private employment, the Police and Fire Public Interest Arbitration Reform Act at N.J.S.A. 34:13A-16.6 requires the Commission to prepare or have prepared a survey which is a public document of private sector wage increases for use by all interested parties. The Commission did make available such a survey in August 1996, the first year in which such reports were required. Data for 1997 have not yet been distributed by PERC. The August 1996 document reflects a 3.4% private sector wage change from 1994 to 1995 which is the first year of the agreement in this proceeding. The figures are broken down by County and the figure for Passaic County was 2.4%.

Wage data published by the Bureau of National Affairs<sup>14</sup> reflect median pay increases of 3% for 1.5 million workers covered by collective bargaining agreements reached in 1996 and that was the same as the figure reported in 1995.

Therefore, annual wage increases of 3%, as I shall award, are between the average wage increase received by public sector employees in the State and County in 1995. The awarded increase is consistent with private sector increases in 1995 and 1996 whereas, obviously, the annualized 1.7% increase proposed by the City and the

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<sup>14</sup> I am taking arbitral notice of this data.,

annual 5% increase proposed by the PFOA are both well outside of the private sector wage increase range.

Comparisons also are to be made to public employment in general. Again, the parties submitted very little data. The City cited settlements between the State of New Jersey and its unions which included a two-year wage freeze beginning July 1, 1995.

Public sector wage data published by the Bureau of National Affairs, of which I am taking arbitral notice, indicates that state and local government workers' wages and salaries increased 3.2% in 1995. The compensation costs for these employees, which includes benefits as well as wages, increased by 3% in 1995.

Thus, based on these comparisons with public employment in general, annual increases of 3% are totally consistent and justified.

The third part of this comparative analysis deals with public employment and it has two components: the same jurisdiction and comparable jurisdictions. N.J.S.A. 34:13A-16-2 requires PERC to promulgate guidelines for determining comparability under this criterion. PERC has done so and I have been guided by this document, although it is not intended to be exhaustive and the parties are free to urge a consideration of other factors as well.

Starting with comparisons with other employees in the City of Passaic, it is clear that the City's proposal is in line with the wage increases granted to other City employees. These increases have ranged from 1.17% to 1.5% in each of the two or three years covered by the agreements with other City employees. Thus, the City has offered slightly more to its fire officers than to other City employees. These settlements have all been with units which are not covered by the interest arbitration law. The City is in arbitration with its firefighters and police officers so it is not possible to compare wage increases received by law enforcement officers or the rank and file firefighters.



The PFOA cited the award of Arbitrator Buckheit in which he cited the fact that fire officers were paid less than their police superior counterparts by 3.2% and that there was no justification for that gap in the record before him. Buckheit awarded 1.5% payable on July 1, 1991 beyond the amount received by the police and fire superior officers on January 1, 1991 but the police superiors have received greater increases than those received by the fire officers in subsequent years.<sup>15</sup> Nevertheless, particularly in view of the fact that the fire officers receive much higher absolute salaries than do the employees represented by Teamsters 866, the Employees' Association and the Supervisors' Association, the City's position is more reasonable than that of the PFOA on the basis of comparisons with the same jurisdiction.

Both parties discussed fringe benefits as part of this factor. The City noted that other non-uniformed City employees hired after December 31, 1995 will not receive longevity and that the firefighters have agreed to accept the City's longevity proposal regarding the elimination of the 14% step for employees currently receiving longevity payments of 10% or less. The City notes that this schedule would still be vastly superior to the longevity benefits received by those City employees receiving longevity. The City also compared time off in the form of sick leave. Whereas the PFOA members receive 360 hours of sick leave, those represented by the PBA receive 160 hours and other City employees receive either 120 or 105, depending upon the length of their work day. The City also pointed out that the civilian employees made changes in their health insurance benefit which, because of reductions in the State Health Benefits Plan rates, the City is not seeking from the PFOA.

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<sup>15</sup> The PFOA compared salaries of police and fire superiors with the same title in their rank, i.e. police captain and fire captain. These two ranks, however, do not correspond on the organization chart. A police captain represents the third level of supervision whereas a fire captain represents the second level of supervision.

The focus of the PFOA has been on comparisons with the PBA and it argues that while the jobs are in many ways similar, the benefits received by the fire officers are inferior to those received by the police superiors. The longevity presently received by the two groups is the same. If the arbitrator were to award the City's position, this would be changed. I do not know whether the City is seeking a similar change in its negotiations with the PBA but I do know that the firefighters have accepted the change proposed by the City and that is the closest comparison, in my view.

The PFOA cites the fact that PBA members receive one personal day, one more bereavement day and three more vacation days than the fire officers. Such comparisons, however, are meaningful only if based on hours rather than days. In light of the 91 day basic work year worked by fire officers, it can hardly be said that fire officers do not enjoy a sufficient number of days off. While the work year of the police superiors was not provided, I suspect that the total number of hours of vacation received by fire officers exceeds the total number of hours of vacation received by police superiors. The PFOA supports its proposal regarding supplemental compensation by saying that it is only seeking what the police superiors now receive. No data were provided, however, regarding the supplemental compensation received by other City employees.

This is an appropriate place to discuss the non-wage proposals of the two parties, although I shall also refer to comparisons with other fire officers and Overall Compensation as part of this consideration.

Both parties submitted proposals regarding longevity. I shall award the City's proposal to the extent that it mirrors the agreement signed by the City and the FMBA. Under that agreement, the 14% longevity step is eliminated for officers receiving 10% or less in longevity payments at this time. This is justified not only because it is what is

being received by the rank and file firefighters but also because a 14% step is quite generous, as even the PFOA at least implicitly recognized by its willingness, albeit in return for another change, to drop the 14% step. When Passaic is compared to other municipalities, only Jersey City (16%), Clifton (12.5%) and Newark (14%) have longevity steps above the 12% proposed by the City. The 12% maximum will be comparable to and in some cases (Keamy - 10% and Bloomfield - 10%) better than the longevity received by other fire officers in terms of the maximum benefit. Five of the eight municipalities, however, provide the maximum benefit after less than 25 years of service.

The City's proposal to eliminate longevity altogether for new hires cannot be justified. While the City has eliminated this benefit for its non-uniformed employees, there is no evidence that this benefit has been eliminated for any public safety employees, either within or outside of Passaic.

The PFOA's longevity proposal would move the 12% step from the end of 25 years of service to the end of 24 years of service. I shall adopt this proposal. It will cost an additional \$1,065 for one year for a lieutenant and \$1,167 for a captain at the 1994 rates. It might also serve to entice officers to retire after 25 years of service rather than to remain additional years in order to reach the top longevity step. To the extent that the change causes officers to retire earlier than they would, it will result in savings to the City because the retiring officers will be replaced by younger officers receiving less longevity.

This proposal is justified on a comparative basis. The longevity schedule submitted by the City shows that the top step is reached after 24 years in Paterson, Bloomfield and Teaneck, after 20 years in Keamy and 19 years in Weehawken. In two of the remaining three jurisdictions, the maximum rate is above 12%. Officers in Jersey

City, which has a top rate of 16%, Clifton, which has a top rate of 12.5%, and Newark, which has a top rate of 14%, must have 25 or more years to reach the top longevity step.

Therefore, this change is justified because of its minimal direct cost impact, probable savings because it will encourage earlier retirements, the prevalence of longevity schedules under which the top rate is reached in less than 25 years and as a trade-off for the elimination of the 14% longevity step.

The City also has proposed a major change in the sick leave provision for both currently employed officers as well as those not yet employed. For current officers, the City wants to reduce sick days from the current fifteen to ten and for officers not yet employed, it wants to reduce the number of sick days from fifteen to eight. These changes are fully justified for officers who work 24-hour shifts. All but three fire officers work that schedule. They receive 360 hours of sick leave at present. This simply cannot be justified. I assume that the 15 days was not changed when the schedule was changed to the present one. Regardless of the history or the reason, the reduction of sick leave to 240 hours as proposed by the City for current employees and to 192 hours for new employees will still leave both groups with far more hours than the 160 hours received by the City's police officers and the 120 hours or 105 hours received by the City's other employees.

I have accepted this proposal because I agree with the City that sick leave is most meaningfully measured in terms of hours rather than days. With the exception of three administrative officers, these officers work a 24-hour day. Thus, fire officers receive a 360 hours of sick leave per year or 15 days times 24 hours. Police officers receive 160 hours or 20 days times eight hours. All other municipal employees receive 15 days, 105 or 120 hours, depending upon whether their work days are seven hours

or eight hours. Thus, the sick leave benefit for the fire officers is far out of line with that received by all other municipal employees and this cannot be justified.

I do not accept the argument of the PFOA that a day is a day for purposes of sick leave. Fire officers on a 24-hour schedule report to work only 91 times per year, excluding vacations and sick leave and any other leaves. The City loses a full 24 hours of work when a fire officer takes a sick day whereas it loses only seven or eight hours of work when other City employees take sick days. This disparity cannot be rationalized.

Furthermore, as discussed above, based on the usage of sick leave in the last two years, only two officers used over ten sick days in 1994 and only three used over ten days in 1995. For the two year period, only two officers exceeded a total of 20 sick days. Presumably, those officers as well as the others had accumulated sick leave from prior years. Thus, the impact of this change will not be harsh on the officers but it should result in a savings to the City, in part through a reduction in supplemental compensation payments which are based on accumulated sick leave.

The City offered no rationale for either of its other two proposals regarding sick leave. One would delete "family" sick leave and the other would require a doctor's note after three incidents. I shall not award either of these proposals.

The PFOA is seeking two personal days with those days, if taken, to be deducted from sick leave. Given the schedule of the vast majority of the fire officers and the fact that a "day" for them is 24 hours, one day really is the equivalent of three days and simply cannot be justified. I recognize that police officers receive one personal day. Given the difference in work schedules, this disparity can be justified.<sup>16</sup>

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<sup>16</sup> I do not know if these officers are permitted to swap tours but if they are, there would be even less reason for personal days.

The PFOA is seeking the right to sell back up to half of the unused sick leave each year. There is no evidence that other City employees enjoy this benefit and it would be a costly one to the City. It must be remembered that the purpose of sick leave is to protect the incomes of employees who are sick for a reasonable period of time. It is not meant to be another source of income. This proposal will be denied.

The only argument in favor of the PFOA's supplemental compensation proposal is that the PBA enjoys this benefit so that each sick day is compensated as an eight-hour day rather than as a four-hour day upon retirement, subject to the cap. I do not know, however, what other City employees receive for unused sick days and it seems to me that there is an adequate incentive not to use sick days unnecessarily if they are compensated at the rate of 50%. Thus, I shall deny this proposal.

The PFOA proposal for a salary adjustment for captains and lieutenants as a result of the elimination of the title battalion chief cannot be justified. While I recognize that this change did have a discernible impact on the fire officers, as the extensive testimony of the PFOA's witnesses made clear, the City had the right to make the change. As the comparative data submitted by the parties established, not all municipalities have the rank of battalion chief. Passaic is not unique in this regard. This proposal shall be denied.

Finally, there is no need for the PFOA's proposal that the City be required to meet to negotiate the impact on terms and conditions of employment if the city decides to abolish other titles or demote employees in a title. The officers enjoy their statutory rights, whether or not specified in the parties' agreement. This matter is best governed by the law.

I turn now to the final aspect of Comparisons which involve similar comparable jurisdictions. Both parties submitted wage and other data, to the extent available, for

seven common municipalities: Newark, Jersey City, Paterson, Bloomfield, Teaneck, Keamy and Weehawken. The City also provided data from Clifton which I believe should be considered in any comparative analysis. Clifton not only is in the same county as Passaic but the two municipalities are contiguous and even have a mutual aid pact.

Not all communities have paid fire departments so comparisons for firefighters and fire officers are more difficult than they are for police officers and police superior officers. Thus, it is generally necessary to extend the geographic range beyond the immediate county of the public employer. The ranges in variables such as population, area and income also vary more widely than would often be the case for municipal police officers, especially those not in a larger city.

Having said that, based on the data submitted by the parties, increases closer to those proposed by the PFOA than those proposed by the City would be justified. Looking at the data submitted by the City, in 1994 lieutenants ranked second of four municipalities in wages, captains ranked sixth of nine municipalities, and deputy chiefs ranked second of four municipalities.

In 1995, under the City's proposal,<sup>17</sup> and using the municipalities urged by the City, lieutenants would rank second of three, captains fifth of six and deputy chiefs second of three. In 1996, lieutenants would rank second of two, captains would rank fifth of five and deputy chiefs would rank third of three. Under the PFOA's proposals, in 1995 lieutenants would rank first of three, captains would rank third of six and deputy

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<sup>17</sup> I have based these calculations on rate increases of 3% for 1995, 1.5% for 1996 and 1.5% for 1997 for the City and 5% for 1995, 5% for 1996 and 7.5% for 1997 for the PFOA.

chiefs would rank second of three. In 1996, lieutenants would rank first of two, captains would rank second of four and deputy chiefs would rank second of three.<sup>18</sup> Thus, it appears the officers would improve their relative position slightly under the PFOA proposal (except in 1997 when it would improve considerably) whereas the relative position would decline under the City's proposal.

Based on the increases I shall award,<sup>19</sup> the rankings in 1996 would be as follows: lieutenants - second of two, captains - third of four and deputy chiefs - second of three.

Thus, while this part of this factor is more favorable to the position of the PFOA than to that of the City, some modification of that position is indicated by the comparative data.

Looking at the **Comparability** factor overall, the private comparisons support the 3% annualized award, the general public sector comparisons support the 3% annualized award, the comparisons with other municipal employees in the City support the City's position and the comparisons with other fire officers outside of the City support the PFOA's position. The 3% annualized award is between these two positions and serves to preserve the relative position of the fire officers.

**Overall Compensation** The overall compensation presently received is the next factor. This evidence regarding this factor has been presented above as part of the comparative analysis, both with respect to external comparisons and with respect to

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<sup>18</sup> While no data were provided for 1997, it is virtually certain that the City's officers would do very well with the 7.5% increase ascribed to that year of the agreement under the PFOA proposal and, alternatively, would fall considerably further behind under the 1.5% increase proposed by the City for that year.

<sup>19</sup> These increases are calculated on the basis of a 4.5% increase in 1995, 3% increase in 1996 and 3% increase in 1997.



internal comparisons - uniformed and non-uniformed - in the City. Nothing needs to be added.

**Stipulations of the Parties** The only stipulations were that the parties had agreed upon the five items listed above which the parties asked be incorporated into the award. Additionally, it was stipulated that the PFOA's financial expert considered the cost only of the Union's base wage proposal; he did not consider the cost of the other economic proposals of the PFOA.

**Lawful Authority** While the lawful authority of the public employer, and particularly the Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq., is potentially a significant factor in an interest arbitration proceeding, and one which the legislature wanted to be sure would be considered by arbitrators,<sup>20</sup> the City explicitly acknowledged that there were no legal impediments which would prevent it from paying the final economic offer of the PFOA and that the Cap was not an issue.

This acknowledgment is supported by the evidence. As will be discussed more fully in the next section, the City has been able to regenerate a surplus of over \$2 million in each of the past three years. Its fund balance at the end of SFY 1995 and SFY 1996 was approximately \$2.8 million each year. As Dr. Werner testified, that fund balance exceeds the 5% figure generally regarded by the rating agencies as a reasonable level of surplus.

Of particular significance in terms of this criterion is the fact that the City used 3% of its Cap in 1997. It could have budgeted up to 5%. The difference between the 3% and 5% can be banked. The amounts under Cap can be banked for two years. The City can carry over \$3.8 million from SFY 1996 and SFY 1997 going into SFY

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<sup>20</sup> I base this statement on the fact that the statutory criteria, as revised in the Police and Fire Public Interest Arbitration Reform Act, refers to the Cap law not only under this criterion but also under the interests and welfare of the public criterion.

1998. Thus, it is obvious, given the relatively small amount at issue in this proceeding, that the City has the lawful authority to meet the proposal of the PFOA. Of course, I will not award that full amount so it is even more clear that the City will not exceed its lawful authority.

**Financial Impact** Given the small size of this bargaining unit, it cannot be asserted that this proceeding will have a major direct financial impact on the governing unit and its residents and taxpayers.<sup>21</sup> The 1994 base salaries for the unit were \$1.7 million in a municipal budget of well over \$50 million. This, however, is misleading. The statute requires arbitrators to consider comparisons with other employees in the City. The City and its other public safety units have not concluded agreements for the years after 1994. Therefore, what is awarded in this proceeding would be expected to have a major impact on the results of the other negotiations or arbitration proceedings. In short, the rank and file firefighters and the police officers and police superior officers would be expected to receive increases which are not too dissimilar for those awarded in this proceeding. In effect, the impact of this award will not be confined to the fire officers but will extend to the City's other public safety employees.

Furthermore, it is very important to understand the recent fiscal history of the City of Passaic. The City had an actual negative ending balance of (\$264,178) on June 30, 1992. It has had positive ending balances since that time including ending balances in excess of \$2 million in 1994, 1995 and 1996. Nevertheless, in the not very distant past, the City did not end the year with a positive fund balance. The City's

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<sup>21</sup> The record established that a \$.01 increase in the tax rate would generate approximately \$133,000. The total net economic cost of the wage increases which will be awarded are approximately \$13,000 in 1995, \$65,000 in 1996, \$54,000 in 1997 and \$55,000 in 1998. In total, this represents about one and one-half cents over that three and one-half year period.

equalized general tax rate has been the highest in the County every year from 1990 through 1995. This has led to a strong desire and effort to reduce taxes.

The total general tax rate was \$3.09 in 1992, \$3.29 in 1993, \$3.90 in 1994, \$4.01 in 1995, \$3.89 in 1996 and \$3.87 in 1997. This indicates that the City has attempted with some modest success to reduce its very high tax rates in the last several years.

The City has been able to increase its tax collection rate which is a positive sign. This rate has gone from 89.93% in 1992 up to 93.48% in 1996. This has permitted the City to budget less in its reserve for uncollected taxes. In its SFY 1997 budget, the City anticipated a tax collection rate of 93.48% which is the maximum rate permitted by law. This is not the most conservative way to budget but it demonstrates that the City is extremely anxious to keep property taxes as low as possible.

Further evidence of this is that the City reduced the amount budgeted between 1994 and 1995, had a very slight increase in 1996 and then a further decrease in 1997. This, of course, reduces the need for revenue and permits tax rates to decrease if other revenue sources at least remain constant.

There has been a downward trend in lapsed reserves in the last three which indicates tighter and more realistic budgeting. This also, however, has a negative effect on the City's ability to regenerate surplus.

Another indication of the City's very tight budgeting is that this old City, with its aging infrastructure, appropriated no money for capital improvements in 1997 and only \$124,100 in 1996.

The City, like others, has experienced large increases in its contributions to pensions for its employees and especially for firefighters and police officers. There was a 28.1% increase in 1996 and a 24.6% increase in 1997. Both the Mayor and City

Council has been vigorous in reducing the City's expenditures in the last several years. The elimination of the rank of battalion chief in the Fire Department was one illustration of efforts to reduce expenditures. That action reduced the Fire Department budget by a considerable amount between 1994 and 1995 although it has increased again almost to 1994 levels.

The City's fund balance has exceeded \$2.7 million in 1995 and 1996. The City used \$2.2 million in surplus anticipated in its 1997 budget and the PFOA financial expert acknowledged that the City was unlikely in that year to regenerate \$2 million in surplus as it has done in the prior several years. There are several reasons for this including the unlikelihood of a further increase in the tax collection rate and the inclusion of some one-shot items in the miscellaneous revenues not anticipated category.

One reason for the City's concern about the tax rate is that the residents of this City are not well off. This is indicated in part by the fact that the net valuation per resident is and has in recent years been the second lowest in the County. Only Paterson has a lower figure. Thus, the tax base from which local property taxes must be raised is smaller than virtually all other municipalities in Passaic County. Except for Wanaque, Passaic has the largest percentage of real property which is exempt from taxation.

Median household as well as per capita income are low in Passaic. Of the nine municipalities used by the City for comparative purposes, Passaic was ahead only of Newark in median household income in 1989 and ahead only of Newark and Paterson in per capita income that year, the last year for which data are available. Thus, the taxpayers of Passaic not only have low incomes but they have high tax rates. These factors point to an award which is sensitive to the taxpayers and which does as little as

possible to the tax rate while still meeting the legitimate needs and expectations of the officers.

Not all of Passaic's financial news is bad. Passaic has been one of only two municipalities in the county to enjoy an increase in net valuation between 1990 and 1995, although that increase has been less than .1%. The City underwent a revaluation in 1992 and had the usual tax appeals and associated loss of ratables. As stated, the tax collection rate has increased. There is a reasonable surplus and there have been several years with substantial regeneration of surplus. The tax rate has been reduced somewhat and the percentage increase in that rate between 1990 and 1995 was the third lowest in the County. There is no significant record of overspending with the exception of \$290,000 in connection with the blizzard of 1996. Most of the large tax appeals have been resolved. There are some signs of development including a large Shop Rite and satellite stores and a Resource Recovery site. Some new construction has led to new ratables and additional tax revenues. The City also receives State and Federal grants.

I do not regard it as significant that revenues are generated by the Fire Prevention Bureau. That Bureau is simply doing its job and it happens to constitute a revenue source. This money is not meant for and should not be considered as additional funds for fire salary and wages any more than the money collected by parking meter attendants can be considered as earmarked for their salaries and benefits.

The City has some money for salary increases. In fact, it has \$284,945 which was encumbered for salary increases for police officers and firefighters and officers. Additionally, there is \$129,700 reserved for 1996 salary adjustments. Finally, the City budgeted \$275,355 for salary adjustments in 1997. The City's projections and figures

were based on its final offers and assume the same increases for both firefighters and police officers which it offered the fire officers in this proceeding. While it will require some money beyond the amounts already encumbered and reserved as well as that budgeted in 1997 for this purpose, the amount awarded, even if other units obtain reasonably similar increases, is not such as to create a hardship either on the budget or the taxpayers.

Thus, I conclude that the amount awarded, which is 3% per year annualized along with several other changes which will reduce the City's costs, is fully consistent with this statutory criterion.

Cost of Living Data submitted by the City show that the consumer price index increased by 3% in 1996 for all urban consumers in New York and northeastern New Jersey. While the City cited Congressional testimony of Federal Reserve Board Chairman Alan Greenspan to the effect that he agrees with the Boskin Commission that the current measure of the CPI overstates inflation by 1.1% annually, it is appropriate to use the current figures. If they are changed in the future, then the corrected figures can be used. I accept the published figures.

The City also submitted data which shows that members of the PFOA have received wage increases, based on the City's offer for 1995 and 1996, between 1988 and 1996, of 68.69% whereas during that same period, the CPI-U increased by 46.97%. This indicates that the officers have enjoyed an increase in real earnings during this period.

The cost of living data support wage increases of 3%, as shall be awarded. That figure exactly matches the 1996 as well as the 1995 increases. To the extent that the consumer price index has been increasing at a slightly lower rate the first part of 1997, the officers will realize a modest gain in real earnings. In fact, the salary increase

awarded will probably do no more than permit the officers to retain their real earnings at a constant level.

**Continuity and Stability of Employment and Other Factors** This factor, like the public interest, tends to generate contradictory arguments, depending upon one's point of view. The PFOA asserts that its offer will not undermine the continuity of employment but that it will provide a wage and benefit level which will enable the City to retain competent and qualified fire officers while maintaining morale. The City asserts that its offer is the more reasonable in light of the recent history of layoffs and budget problems and that the current push for stability in the budget should not be jeopardized by an award of the position of the PFOA.

In fact, there is no evidence that continuity or stability of employment would be significantly affected by an award of either party's position. There is no evidence that fire officers have ever left City employment voluntarily for higher paying or less hazardous jobs nor is there any reason to believe that this will occur. The City has been able to attract and retain a professional fire force and there is no evidence of employee turnover. Thus, I ascribe little weight to this factor in deciding this case.

In summary, the evidence and arguments of the parties' led me to the award which I described above. That award, which is between the positions of the two parties, essentially matches private sector and other public sector increases generally as well as increases in the cost of living. This is the most objective evidence which is available and I give it great weight. At the same time, the award is between the parties' positions on internal comparisons within the City of Passaic, which favor the City's position, and external comparisons with other fire officers, which favor the PFOA's position. The award provides relief to the City in two areas: longevity and sick leave. It also provides an improvement in the longevity schedule which is advantageous to the

officers but which at the same time is likely to benefit the City by providing a reason for officers to retire earlier than they otherwise would have. The City's lawful authority has not been breached. The interests and welfare of the public have been considered and respected and the continuity and stability of employment have been determined not to be affected. Finally, the financial impact on the governing unit and its residents and taxpayers, which also is an important factor in deciding this case, has been carefully considered and heavily weighted.

Accordingly, I hereby issue the following:

#### **AWARD**

The term of the agreement shall be January 1, 1995 through June 30, 1998.

Salaries shall be increased by 1.5% effective January 1, 1995, by an additional 3% effective July 1, 1995, by an additional 3% effective July 1, 1996 and by an additional 3% effective July 1, 1997.

The longevity provision, effective April 11, 1997, shall be changed by eliminating the 14% step for officers earning 10% or less in longevity and it also shall be changed by making officers eligible for a longevity step of 12% upon completion of 24 years of service.

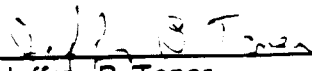
Sick leave shall be changed effective January 1, 1998 so that current employees who work a 24-hour shift receive ten sick leave days per year and employees hired on or after January 1, 1998 who work a 24-hour shift shall receive eight sick leave days per year.

The five items discussed above regarding overtime, vacation, grievance procedure, Union representation and clothing allowance shall be modified as agreed by the parties and incorporated in this award.



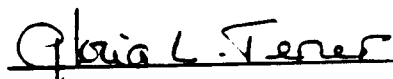
All other proposals of both parties are denied and the prior agreement shall be continued unchanged except to the extent modified by this award and the agreement of the parties.

Dated: July 29, 1997  
Princeton, NJ

  
Jeffrey B. Tener  
Arbitrator

State of New Jersey)  
County of Mercer) ss.:

On this 29th day of July, 1997, before me personally came and appeared JEFFREY B. TENER 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 the same.

  
GLORIA L. TENER  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES SEP 11 1999

