

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

CITY OF VINELAND

"Public Employer"

and

FMBA LOCAL 49

"Union"

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2009-112

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the City:

Michael Benson, Esq.
Buonadonna, Benson & Speziali

For the FMBA:

Stuart Alterman, Esq.
Alterman & Associates

I was appointed interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in this impasse involving the City of Vineland [the "City"] and FMBA Local 49 [the "FMBA" or "Union"]. Despite the good faith efforts of the parties, the impasse was not resolved during several pre-interest arbitration mediation sessions resulting in the convening of formal interest arbitration hearings. The record includes substantial documentary evidence, testimony, financial reports and certifications. Post-hearing briefs were filed and transmitted to each party on or about March 7, 2013.

As required by statute, each party submitted a last, or final offer, prior to the conduct of the hearing as follows:

FINAL OFFERS OF THE PARTIES

The FMBA

1. 5 ½ Year contract w/ some split raises (Step raises only occur on or near January/July 1st)
 - a. Jan 1 – June 30, 2009 – 2.0% raise – full retro
 - b. July 1 – Dec 31, 2009 – 1.75% raise – full retro
 - c. Jan 1 – June 30, 2010 – 2.0% raise – full retro
 - d. July 1 – Dec 31, 2010 – 1.15% raise – full retro
 - e. Jan 1, 2011 – 2% raise – full retro
 - f. July 1, 2011 -- 0.0% raise
 - g. Jan 1 – June 30, 2012 – 1.50% raise
 - h. July 1 – Dec 31, 2012 – 0.75% raise
 - i. Jan 1 – June 30, 2013 – 1.50% raise
 - j. July 1 – Dec 31, 2013 – 0.5% raise
 - k. Jan 1 – June 30, 2014 – 1.25% raise
 - l. All retroactive pay to be furnished within 30 days of award.
2. All members agree to transfer to the AETNA HIF program already established. Members of FMBA 49 shall maintain the individual

levels of benefits, or appreciably similar benefits to those that they have had since 2009-2010.

- a. The FMBA 49 proposes the City create and IRS section 125 plan (cafeteria type plan) for the payment of healthcare related expenses/contributions.
 - b. The City will save a minimum of \$16,888 in 2011 with the Union members contributing towards their healthcare of at least 1.5% at present with significant increase on the way.
3. The City will save a minimum of \$83,000 in 2011 from the current 4 members who have waived their healthcare. Three (3) members per Side Bar Agreement on November 3, 2010.
4. All members agree with the City that joining Aetna Health Insurance Fund (HIF) will benefit the City in the long run in cutting costs instead of Horizon.
5. The Union will accept direct deposit for all members provided that all City employees agree to this and a 60 day notice is given.
6. The Union agrees to remove the last sentence of Article 15, Section 1. (Travel).
7. Vacation leave is increased after 1, 5, 10, 15 and 20 years of service in the current contract. This leave should be distributed January 1 for all members. The increases should be awarded January 1 of the year that the individual will meet the years of service requirement. That means prior to the anniversary date.
8. The Union proposes to amend Article XXII to provide that the City shall provide acting position payment to as many acting positions so designated by the Chief or his designee as deemed appropriate, and shall provide a second acting position when only one acting Lt. is in command without other officers on duty.
9. With regards to Article 5, Section 3, (Association Representatives and Members and Delegates Rights) shall provide:
 - a. The Union President and Union Executive Delegate shall be granted paid leave to attend all union related conventions and all state/regional meetings.
 - b. Three other members elected convention delegates shall be granted paid leave to attend all conventions.

- c. Any member elected to state and/or regional office or executive board shall be given paid leave to attend conventions and meetings at the state or regional level.
- 10. Under Article 4, FMBA 49 seeks to add the following:
 - a. Section 1 add to end of paragraph, "subject to federal and state laws."
 - b. Section 2 add "and privileges" after civil rights.
- 11. The Union proposes to remove from Article 21, Section 4, paragraph 1 and create a new Article named Compensatory Time, and introduce the following language into this new article:
 - a. Section 1 – Compensatory Time shall be earned in lieu of overtime payments pursuant to the FLSA at the request of a firefighter.
 - b. Section 2 – Firefighters are permitted to accumulate 144 hours of compensatory time. Firefighters who have accumulated more than 144 hours shall need the approval from the Chief of the Department or Director of Fire to earn additional compensatory time.
 - c. Section 3 – Firefighters accumulating more than 144 hours shall have the option to:
 - i. Schedule the use of compensatory time to get below 144 hours or,
 - ii. Allow the City to issue a check to the Firefighter in the amount of the number of hours over 144.
 - iii. Continue to bank compensatory time as agreed.
 - d. Section 4 – The City shall notify all Firefighters that have earned over 144 hours no later than June 1 that they will be issued a check. The Firefighter shall notify the City no later than June 15 if they intend to schedule the time in lieu of receiving a check, or continue to bank time as agreed.
- 12. All members of FMBA 49 shall be solely under the direction of and report to the paid career command staff, (or acting command staff) of the Vineland Fire department.

The City

1. **Article 10 – Wages**

Revised Article to read: "Wages will be paid in accordance with Exhibit "A" – Wage Schedule."

2. **Article 11 – Pay Period**

Add new section to read:

All employees shall be enrolled in a Direct Deposit plan in accordance with procedures of the Comptroller's Office no later than 60 days after the effective date of this Agreement. After the Direct Deposit plan is implemented, paystubs may be issued on paper or paperless as determined by the Comptroller's Office.

3. **Article 12 – Vacations**

Revise first sentence of §1 to read:

All 24/48 employees shall receive the following annual vacation leave with pay **for their continuous service with the City**, except as otherwise provided:

§1. Remove "Additional employees may be approved for scheduled leave provided it does not create an overtime situation."

§4. Change "Vacation leave desired prior to May 1 shall be submitted at least 10 days in advance. Approval shall be contingent upon adequate staffing" to "All remaining vacation leave requests shall be submitted at least 10 days in advance and approval shall be contingent upon adequate staffing."

§8. Remove "Additional employees may be approved for scheduled leave provided it does not create an overtime situation."

Add a mandatory training clause as follows:

If mandatory departmental training is announced and posted 30 days prior to the scheduled training, no requests for vacation, personal or compensatory time will be approved for the training day or period of time during the day when training will take place.

4. **Article 15 – Travel Allowances**

§1. Delete last sentence which reads:

"Should the Travel Policy adopted on January 2, 2003 be revised, the benefits granted by it shall not be diminished."

5. **Article 17 – Sick Leave**

Make Worker's Compensation consistent with State minimum 70%.

§4. Add the following language:

"The FMBA 49 shall actively discourage the abuse of sick time by employees" and "FMBA 49 further acknowledges that the City, through the Fire Chief or designee, may adopt such sick leave and verification policies from time to time to control sick leave abuses as it may determine necessary. Patterns of absences may be considered abuse and shall include but not be limited to an employee being absent on the same day each year or excessive absences that extend non-working shifts or other leaves of time." Also add "or whenever there is reason to believe that the employee is abusing sick leave" below the line reading "two consecutive tours or more than five times in a calendar year."

Add language: "Employees off an extended sick leave (two or more tours) shall not be gainfully employed elsewhere during the duration of the extended sick leave."

6. **Article 19 – Personal Leave**

§1. Delete "Additional employees may be approved for scheduled leave provided it does not create an overtime situation."

7. **Article 21 – Overtime**

§4. Clarify compensatory buy-out procedures.

§4. Delete "Additional employees may be approved for scheduled leave provided it does not create an overtime situation."

Delete §5.

8. **Article 24 – Health Benefits**

Replace "family members" with "eligible dependents."

Revise §1 to read:

The City shall pay the premiums for all health, prescription and dental insurances set forth in this Article except for any employee contribution or co-pay set forth herein or required by New Jersey Law.

Create new section to read:

The City shall provide health insurance to all employees and their eligible dependents. The current health insurance plans are Aetna Direct Access \$5 (modeled after the HMO or equivalent plan) and Aetna Direct \$10 (modeled after the HMO or equivalent plan). Any employee enrolled in the Aetna Direct \$10 plan shall be required to pay the difference between the Aetna Direct Access \$10 plan premiums and the Aetna Direct Access \$5 plan premiums. Employees may transfer from plan to plan during open enrollment. The benefits are more specifically provided for and explained in a brochure available to employees.

Increase §2 co-pays as follows:

<u>Name brand, including mail-order</u>	<u>Generic, including mail-order</u>
2012: \$25.00	2012: \$15.00

Revise §4 to read:

Employees and their eligible dependents shall receive a basic dental care plan and choose from among a customary Delta 50/50 Dental Plan, Delta-Flagship Health Systems, Inc. or Delta Preferred Provider Option, or their successors.

9. **Article 25 – Grievances**

Add language to Step 3 as follows:

At the conclusion of the Step 3 answer, the Union shall have 30 calendar days to submit the grievance to arbitration. If the Union does not submit the grievance to arbitration within 30 days, the grievance shall be considered resolved by the Step 3 answer, and arbitration shall be considered forfeited.

10. **Article 32 – Term of Contract**

Four year contract.

11. **Exhibit "A" – Wage Schedules**

See attached wage schedule for existing employees

2009 – 2% – Except Step 1

2010 – 2% – Except Step 1

2011 – 0%

2012 – 0% Add New Step

Step	2008	2009	2010	2011	2012
1	\$34,462	\$35,151	\$35,854	\$35,854	\$35,854
2	\$36,912	\$37,650	\$38,403	\$38,403	\$38,403
3	\$41,595	\$42,427	\$43,276	\$43,276	\$43,276
4	\$43,910	\$44,788	\$45,684	\$45,684	\$45,684
5	\$50,915	\$51,933	\$52,972	\$52,972	\$52,972
6	\$54,983	\$56,083	\$57,205	\$57,205	\$57,205
6.5				\$60,027	\$60,027
7	\$64,252	\$65,537	\$66,848	\$66,848	\$66,848
8	\$66,649	\$67,982	\$69,342	\$69,342	\$69,342
9	\$67,934	\$69,293	\$70,679	\$70,679	\$70,679
10	\$70,345	\$71,761	\$73,196	\$73,196	\$73,196

See attached wage schedule for new employees:

2011 – 0% Add 2 New Steps Remove Top Step

2012 – 0%

Step	2011	2012
1	\$35,854	\$35,854
2	\$38,403	\$38,403
3	\$43,276	\$43,276
4	\$45,684	\$45,684
5	\$49,328	\$49,328
6	\$52,972	\$52,972
6.5	\$57,205	\$57,205
7	\$62,027	\$62,027
8	\$66,848	\$66,848
9	\$69,342	\$69,342
10	\$70,679	\$70,679
Description:		
Drop Top Step		
Add Step Between 4 and 5		
Add Step Between 6 and 7		
Freeze 2011 Rates		

BACKGROUND

The City is located in Cumberland County. Its population in 2010 was 60,724, a 7.9% increase from the 56,271 residents that were counted in the 2000 census. At 69 square miles, it is the largest municipality in the State that is categorized as a “city.” In 2010, the City’s residents had a median household income of \$54,024, a median family income of \$64,185 and a per capita income of \$24,512. 12.8% of the population lives below the government defined poverty line.

The City of Vineland [the “City”] and FMBA Local 49 [the “FMBA” or “Union”] are parties to a collective negotiations agreement [the “Agreement”] that expired on December 31, 2008. The Agreement covers all uniformed paid Firefighters including the Fire Prevention Specialists but excludes Fire Officers who have a separate bargaining unit. There are twenty (20) Firefighters in the bargaining unit. The City also maintains volunteer Firefighters to supplement the work of the paid Firefighters. The Fire Department averages 2,000 calls annually.

Because the compensation issue is at the core of the impasse, considerable evidence was presented regarding the City’s finances. The City and the Union sharply disagree on the state of the City’s finances. The Union submits that the City is financially sound and not on a fiscal cliff. In contrast, the City asserts that it is in extreme distress and suffering from rapid declines in revenues. The Union also argues that existing wage levels place Firefighters at the middle of comparisons in

municipalities it deems comparable and the City's offer, coupled with mandated increases in health insurance and pension contributions for unit members, would cause them to be in a worse compensation position in comparable terms than they were at the beginning of the contract. The City, for various reasons, contends that the comparability figures offered by the Union are not persuasive and, in any event, the Union's final offers cannot be awarded due to the adverse financial impacts it would cause the governing body, residents and taxpayers and because of the constraints required by the lower 2% tax cap levy.

The City's financial presentation centers on many factors that it claims have negatively impacted upon its finances. These include loss in non-tax revenues, sharply rising pension costs, a stagnation in ratables, reductions in state aid, loss of UEV funding, loss of one-time revenues, sharp increases in its tax levies from FY 2007 to FY 2011 and constraints from compliance with the 2% tax cap levy. According to the City, the combination of these factors has resulted in a significant erosion in its fund balance. Its main contention is that its budget simply cannot meet the increased financial costs of the Union's wage proposals. The City submits that it is not even comfortable with having to meet the costs of its own salary proposal.

In contrast, the Union contends that the City had the ability to raise greater revenues within the legal restraints of the caps but has not done so. It submits an appropriation and levy cap analysis reflecting what it defines as an under-budgeting of allowable revenues. Citing past municipal budgets, the Union emphasizes that the City

has not imposed the tax levy at the statutory limits and thus has brought financial pressures on itself. Pointing to the official budget documents in evidence, the Union emphasizes that the City has shown the ability to regenerate surplus, has maintained excess budget appropriations that affords budget flexibility, has maintained substantial fund balances and has maintained a flat total tax rate in years 2008, 2009 and 2010. The Union also points to a \$30 million increase in property values between 2008 and 2010 showing that the City has had the ability to produce revenues. On the other side of the equation, the Union notes that the City's net debt of 0.69 is well below the statutory debt limit and is an indication that it is in a sound financial position. The Union further notes that the City's claim to distress has ignored the financial savings it has reaped from the substantial contributions towards health insurance that unit members have made that are given back to the City and serve as supplements to the City's revenues.

In addition to the main issue of compensation, the parties also disagree on health insurance issues, direct deposit, vacation leave, acting pay, union leave, compensatory time, supervisor direction, travel allowance, sick leave, personal leave, overtime, grievance timelines and the term of the Agreement. The parties' submissions on these issues will be set forth in more detailed fashion within an analysis of each issue.

DISCUSSION

The City and the FMBA have submitted substantial documentary evidence, testimony and oral and written arguments in support of their respective last offers. All

submissions have been thoroughly reviewed and considered. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this

factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).

- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c 62 (C.40A:4-45.45).

I have reviewed the parties' positions in the following context. The party seeking to add to existing terms and conditions of employment has a burden to prove that there is basis to award its proposed change. The burden to be met must go beyond merely arguing for change in the absence of sufficient evidentiary support. When both parties propose a change on an identical issue, each proposed change must be evaluated in

light of the evidence presented as to why there should be a modification to the status quo. Simply because both parties express a desire to change an existing provision (?) does not necessarily require that there be a change. I have applied these principles to my analysis of the issues in dispute. Any decision to award or deny any individual issue in dispute will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. This is so because the manner in which an individual issue is decided can reasonably impact upon the resolution of other issues. In other words, there may be merit to awarding or denying a single issue if it were to stand alone but a different result may be required after assessing the merits of any individual issue within the context of an overall award. These principles are in harmony with clear legislative intent that the overall economic impact of all terms of an award must be considered.

DURATION

The FMBA has proposed a contract duration commencing January 1, 2009 and extending through June 30, 2014. The City has proposed a contract duration commencing January 1, 2009 and extending through December 31, 2012. There are many factors to consider when deciding contract duration. The fact that I deem to be the most persuasive is that the City and FMBA Local 249 (Fire Officers) have voluntarily negotiated an agreement that extends through December 31, 2013. Given this, for operational and departmental budgetary purposes, it is reasonable to provide consistency in the terms of the agreements for both rank and file firefighters and fire officers. There is sufficient evidence in the record to award terms for these years.

Accordingly, the contract duration shall be January 1, 2009 through December 31, 2013.

ARTICLE 11 – PAY PERIOD

The City has made the following proposal with respect to pay period:

Add new section to read:

All employees shall be enrolled in a Direct Deposit plan in accordance with procedures of the Comptroller's Office no later than 60 days after the effective date of this Agreement. After the Direct Deposit plan is implemented, paystubs may be issued on paper or paperless as determined by the Comptroller's Office.

The Union has indicated that it will accept direct deposit for all members provided that all City employees agree to same and that a sixty (60) day notice be given prior to implementation.

Award

I award the City's proposal with the following modifications. It is reasonable to provide sixty (60) days notice of change to unit employees prior to implementation. Moreover, prior to implementation, the City should demonstrate to the Union that the direct deposit program has been implemented for other unit employees. This would support the City's claimed need for administrative efficiency. That tie-in shall be limited to other public safety employees. Accordingly, I award the following:

The City shall have the right to enroll unit employees in a Direct Deposit plan upon 60 days notice and proof that the program has been implemented for all unit employees in the police and fire departments.

ARTICLE 15 – TRAVEL ALLOWANCES

The City has proposed to delete the last section of Article 15, Section 1. That sentence reads:

“Should the Travel Policy adopted on January 2, 2003 be revised, the benefits granted by it shall not be diminished.”

The Union has agreed to the City’s proposal. Given the parties’ agreement, I receive this as a stipulation pursuant to N.J.S.A. 34:13A-16g(4) and it is awarded.

ARTICLE 25 – GRIEVANCES

The City proposes to add language to Article 25, Step 3. The City’s specific express concern is that if there is no settlement of the grievance in Step 3, there is no time limit expressed in Article 25 in which to then submit the unresolved grievance to arbitration. In this regard, the City’s proposal is construed as an effort to modify Step 4 rather than Step 3. The City has proposed to add the following language:

At the conclusion of the Step 3 answer, the Union shall have 30 calendar days to submit the grievance to arbitration. If the Union does not submit the grievance to arbitration within 30 days, the grievance shall be considered resolved by the Step 3 answer, and arbitration shall be considered forfeited.

Award

It is typical for grievance procedures to have a set period of time for unresolved grievances to be submitted for arbitration. This provides notice of a continuing dispute, the ability to retain evidence and to avoid disputes over whether there are laches in the event a demand for arbitration is filed many months later. The language proposed by the City would resolve this current defect in the procedure and therefore, it is awarded.

SUPERVISORY CONTROL

The Union, in Proposal #12 of its final offer, has proposed a new provision stating that "All members of FMBA 49 shall be solely under the direction of and report to the paid career command staff, (or acting command staff) of the Vineland Fire department."

The Union provides the following rationale in support of its proposal:

During the interest arbitration hearing, there was testimony from members of FMBA 49 regarding the problems that they have regarding volunteer staff and their command staff. Currently in the Vineland Fire Department, there is a volunteer presence to assist with calls in the City. The volunteer firefighters are elected to their positions of supervisors and do not necessarily have the training or experience of those of the paid staff.

The career staff supervisors are all promoted and approved through testing, merit and qualifications and not elected by the membership. As such, they demand more respect for their orders and authority than the volunteer supervisors. As a safety and security purpose, it is requested by FMBA 49 that as part of the contract it is specifically directed that they are directly under the supervision of the career staff and not under the volunteer commanders.

The City urges rejection of the proposal. It contends that if this proposal were to be awarded, it would unduly interfere with its managerial powers as set forth in Article 3

– Management’s Rights concerning the right to direct the work force. Noting that career and volunteer firefighters often work together, it is concerned that the proposal could undermine the rank structure and chain of command within the fire department. The City points to the statement of the Fire Chief it submits into the record opposing the proposal for these reasons.

Award

I do not award this proposal. The Union has raised concerns as set forth in the testimony but it has not established that the proposal is operationally sound and functional during the distresses that occur during a dangerous fire call. Although I do not award the proposal, I recommend that the FMBA’s concerns be addressed by the City and, if necessary, a joint committee be formed to resolve issues that deal with managerial direction, supervisory control and the safety and security for all paid and volunteer firefighters.

ARTICLE 22 – ACTING ASSIGNMENTS

The Union proposes to modify the article that addresses “acting assignments.”

The proposal reads as follows:

An employee assigned to act in the position of next higher rank shall be paid at that position’s base rate hour for hour for the total time in that position provided that a minimum of 30 minutes is worked in the acting position.

The FMBA provides the following rationale for its proposal:

There are days when FMBA members are working and there is no proper supervision in place and members have to act in the capacity as a supervisor. Due to call volume, there are problems when there is insufficient supervision and firefighters are required to step up and assume the supervisory positions. When those firefighters are undertaking the duties and responsibilities of those positions to become the acting supervisors for those jobs, and in light of the additional work that it takes to be a supervisor, members of the FMBA are requesting to be paid to fulfill those supervisory positions. All of this of course will be at the discretion of the Chief or his designee and only when deemed appropriate shall members receive acting position pay. There have been issues right now where firefighters have worked in the acting position for periods of time where they have had to write reports and take care of the entire fire scene and have not been paid the acting salary. Yet, sometimes firefighters who have worked as acting individuals for an hour have been paid for an hour. There is no continuity of criteria or timing in order for members to be paid for the acting titles. In this instance, the FMBA is requesting a provision in the contract to account for these situations when they arise so that members can be properly compensated for the work that they do.

The City urges rejection of the proposal. Initially, the City it asserts that the existing language in Article 22 sufficiently covers the subject of acting assignments. It points to the Union's understanding that such assignments are at the discretion of the Chief. The City objects to the second part of the Union's proposal because it allegedly would interfere with the City's right to set staffing levels.

Award

I do not award the proposal. The existing language appears to cover the issue of acting assignments and compensation for such assignments, although the Union claims that it has not been properly or consistently applied. In the event that the FMBA concludes in individual circumstances that the firefighters are working in acting positions

and meeting the requirements and responsibilities that are supervisory in nature any such disputes can be reviewed under the grievance procedure.

ARTICLE 19 – PERSONAL LEAVE

The City has proposed to delete the last sentence to Article 19, Section 1. That sentence appears as underlined within the entire current provision:

§1. The City grants 72 hours of personal leave to each 24/48 employee and 24 hours to each 40 hour week employee annually. Said personal leave shall be granted with or without notice provided there is adequate staffing upon an employee's written request on the Fire Department form submitted to the Director of the Fire Department and/or Fire Chief or their designee, with a copy to the immediate supervisor. Such request shall be granted, at the discretion of the Director and/or Fire Chief or designee so long as his/her employee's absence can be permitted without interference with the proper conduct of the Department. Personal leave shall not accumulate. Personal leave may be taken in font hour increments.

No more than two 24/48 hour employees may be off at the same time for any scheduled leave, which shall be defined as vacation, personal or compensatory time. Additional employees may be approved for scheduled leave provided it does not create an overtime situation.

The City offers the following argument in support of its proposal:

This proposal is the same as Article 12 – Vacations, §1. It addresses a sentence that has caused a considerable amount of overtime since it was introduced in this agreement. As written, it allows for a third firefighter to schedule a vacation day if a superior fire officer, represented under a different bargaining unit, is not scheduled off at the time of request. Once this vacation request is approved, the superior officer can submit a leave request which cannot be denied if it meets the approval parameters established in the FMBA-249 superior officer's Agreement.

The FMBA urges rejection of the City's proposal to remove phrasing from the Agreement regarding personal leave if it does not create an overtime situation. The FMBA argues that:

The contract is clear that the use of accumulated vacation or personal leave cannot be used if it is going to create an overtime situation. The City provides no support for its assertion that removing this language is going to cure some alleged defect in the Collective Bargaining Unit. The City of Vineland is trying to use the FMBA 49 contract to deal with an alleged flaw in the FMBA 249 contract. As such, a penalty should not be imposed upon the members of FMBA 49 due to an action of a member of FMBA 249. That issue should be addressed in the FMBA 249 contract.

Award

I do not award the City's proposal. Initially, I do not believe that the City has offered sufficient evidentiary support for this proposal. Moreover, because the existing language addresses the issue of overtime for employees in this unit, the conflict that the City raises appears to arise under the language in the Fire Officers contract. I recognize that the City's concerns are created by differing language in the two agreements. However, because the problem arises when the Fire Officer's Agreement is invoked, I do not find it reasonable at this time to address this issue solely through a modification of the existing language in the Firefighters' Agreement.

ARTICLE 12 – VACATIONS

The Union and the City have each advanced proposals to modify Article 12.

I first address the FMBA's proposal. Article 12, Section 1 provides for various levels of paid vacation time linked to various levels of increased years of service to the City. Pursuant to Section 5, vacation accrues in proportion to the number of completed months by each employee in any calendar year. The Union proposes that all vacation leave be distributed on January 1 of each year instead of by anniversary date. According to the Union, unit members have been confused because of the inconsistent manner in which the City has awarded vacation time. Because of this, the Union claims that unit members have had difficulty in scheduling and accounting for accrued vacation time. It contends that this problem would be resolved by its proposal to distribute vacation as of January 1 of each year preceding an employee's anniversary date.

The City responds that the issue is not in need of any clarification because of the current method by which the City is administering the existing provision. As a confirmation of this, it asserts the following:

The city already credits vacation leave back to January 1 from the hire date of an employee. For example, a firefighter who was hired on August 1, 2000 would be credited with seven months time and be treated as if he had been hired on January 1, 2000, for vacation leave entitlement. Such firefighter would move on vacation tiers as follows:

- After one year = January 1, 2001
- After five years = January 1, 2005
- After 10 years = January 1, 2010
- After 15 years = January 1, 2015
- After 20 years = January 1, 2020

The Union is requesting something that is already done for employees City wide. The City has been administering vacation leave uniformly in the manner set forth above for many years. Perhaps the Union believes that a mistake was made at some point in time or that this provision is administered subjectively. If a mistake was ever made, it was corrected.

The City believes the Union already possesses what it proposes. The City believes there is no reason to add language to the Agreement, especially when there is no such language in any other City agreement.

The clarification offered by the City coincides with the Union's proposal to award the vacation increases in the January preceding the employee's anniversary year. The Agreement should contain language expressing this mutual understanding. Based upon this understanding, I do not award the Union's proposal.

The City first proposal is to revise the first sentence of Article 12, Section 1 to add language stating that annual vacation leave with pay be awarded for "continuous service with the City." The City offers the following rationale in support of its proposal:

This proposal clarifies that if an employee has a break in service with the City, then is reemployed, the years served under the first employment do not carry over to the second employment. For example, consider a firefighter who serves five years with the City and then resigns to take a job in another jurisdiction. If such firefighter decides after two years in the other jurisdiction to return to Vineland Fire Department, the firefighter would effectively become a new employee and earn vacation at the entry level.

This proposal encourages and fosters continuity in service and allows the City and public to see a return on "investment" in the employee's training experience and benefits. Increasing service time based vacation leave is a luxury benefit provided for continuous loyal service.

This language is also found in the FMBA-249 Superior Officer's Agreement (See Tab – Vacations). Two other collective bargaining agreements have the same language while the City seeks such language for all nine agreements.

In response to the City's proposal, the Union offers the following objection:

The FMBA objects to this proposal as there are individuals that leave and come back into the service and the option should be available for them to resume where they left off depending on the reason for the person's departure. To place in the contract a strict bar to put the person back where they were before they left the City is unfair to that firefighter and the option should be available to return the firefighter back to where they were prior to their departure from the City.

Award

The City's position must be evaluated within the context in which an employee has legally been separated from employment and has returned. A distinction must be drawn between leaves of absence of all types and separations from employment due to resignation or termination. Where an employee has voluntarily left the employ of the City due to resignation or termination, without being placed on an approved leave, and then returns, the accrued leave under Article 12, Section 1 should, unless the City and the Union mutually agree otherwise. Accordingly, I award the City's proposal.

The City's second vacation proposal would also revise Article 12, Section 1. It proposes to delete the underlined portion of the last two sentences in that section:

No more than two 24/48 hour employees may be off at the same time for any scheduled leave, which shall be defined as vacation, personal or compensatory time. Additional employees may be approved for scheduled leave provided it does not create an overtime situation.

The City's rationale for this proposal is as follows:

This proposal addresses a sentence that has caused a considerable amount of overtime since it was introduced in this Agreement. As written, it allows for a third firefighter to schedule a vacation day if a superior fire officer, represented under a different bargaining unit, is not scheduled off

at the time of request. Once this vacation request is approved, the superior officer can submit a Leave request which cannot be denied if it meets the approval parameters established in the FMBA-249 superior officer's Agreement.

This proposal would help the Chief maintain minimum staffing standards and reduce overtime. The City believes that this proposal should be considered in conjunction with the Arbitrator's Statutory Criteria #6 – the financial impact on the governing units, its residents and taxpayers.

The FMBA urges rejection of this proposal. It offers the following argument:

The FMBA objects to removing additional employees who may be approved for scheduled leave provided that it does not create an overtime situation. The City's proposal to remove "additional employees may be approved for scheduled leave provided that it does not create an overtime situation" is without merit. They have provided no specific documentary or testimony evidence regarding the effect of the provision in the contract. The City is trying to impose upon the FMBA 49 things that were negotiated by the FMBA Local 249 Superiors Union. The provision may appear in the FMBA 249 contract but it does not necessarily mean it should apply to be applicable to FMBA 49. There was no testimony at the interest arbitration hearing and there were no documents provided that the Chief has had any problem maintaining a minimum level of staffing. There was also no indication there were issues with overtime. As such this proposal must be denied.

Award

The issue presented here is substantially similar to the proposal the City made to revise Article 19, Section 1. That proposal was not awarded. For the reasons I expressed therein, this proposal is also not awarded.

The City's third vacation proposal would revise article 12, Section 4. This section deals with the scheduling of vacations. The City's proposal would delete certain language and in its place add new language:

Change "Vacation leave desired prior to May 1 shall be submitted at least 10 days in advance. Approval shall be contingent upon adequate staffing." and add "All remaining vacation leave requests shall be submitted at least 10 days in advance and approval shall be contingent upon adequate staffing."

According to the City: "this proposal would ensure that at a very minimum, remaining vacation leave not addressed by other criteria be scheduled at least 10 days in advance. This proposal addresses staffing and will further the efficiencies of the Fire Department."

The Union opposes the City's request to change Article 12, Section 4. It submits:

This change in the provision of vacation scheduling has not been justified by the City of Vineland. There has been no testimony or information introduced at the Interest Arbitration hearing to state why there has been a problem with the current use of vacation leave scheduling thereof. Currently, through the Collective Bargaining Agreement there is a provision for oversight and approval for vacation leave which ultimately rests within the Chief of the Department. As such, this language change is not justified and has not been proven by the City of Vineland.

Award

I do not award this proposal. While there may be some merit to the City's concern over the impact of vacation usage, there is insufficient evidence that would justify a change during this contract term.

The City's fourth vacation proposal would remove the following language from Article 12, Section 2: "Additional employees may be approved for scheduled leave

provided it does not create an overtime situation.” This proposal is a substantially similar proposal that the City has advanced to change Section 1 as set forth above. The only difference is that this proposal addresses vacation leave for 40 hour per week employees instead of those who work 24 hour shifts. The Union objects to the proposal for the same reasons that it objected to the City’s proposal to change Section 1.

Award

The issue presented here is substantially similar to the proposal the City made to revise Article 12, Section 1. That proposal was not awarded. For the reasons I expressed therein, I do not award the City’s proposal.

The City’s fifth proposed change to Article 12 is to add a mandatory training clause. Its proposal is as follows:

If mandatory departmental training is announced and posted 30 days prior to the scheduled training, no requests for vacation, personal or compensatory time will be approved for the training day or period of time during the day when training will take place.

The City states its rationale for this proposal as follows:

This proposal emphasizes the necessity of full staffing on mandatory training days. This proposal speaks for itself, and the City specifically the Fire Chief, believes that this proposal will further the efficiencies and the overall mission of the Fire Department. This proposal would not cancel leave that is coincidentally scheduled on a mandatory training day and was scheduled prior to the training notice being posted. The objective of this proposal is to promote training in a reasonable and efficient manner. The City understands that the Union has indicated that it is also amendable to and desires training.

The FMBA urges rejection of this proposal:

The City's request to add a mandatory training clause is equally without merit. There has been no testimony offered if there was a problem regarding training classes or attendance at class. Training is an inherent part of being a firefighter and the FMBA 49 is willing to work with the City of Vineland to make sure that the firefighters are trained to the fullest extent available as the more properly trained the firefighter is, the better off they are when dealing with such a dangerous profession. Currently there is no need for such a provision to be added to the contract as there has been no problem testified to or provided as part of the interest arbitration hearing. As such, the arbitrator should deny such proposal.

Award

The City acknowledges that its proposal would not cancel leave that it had coincidentally scheduled on a mandatory training day, but its proposal does not provide such guarantee. The Union suggests that it desires more training and it appears that the City has a concern that if training is scheduled, leave time taken after such scheduling could interfere with its purpose. There is insufficient justification to disqualify all leave requests merely because training has been scheduled. I do not award this proposal and recommend that it be the subject of joint discussion and raised anew in future negotiations if not resolved.

ARTICLE 5 – UNION LEAVE

The FMBA proposes to revise Article 5. Currently, Article 5, Sections 2 and 3 provide the following:

- §2. The City agrees to grant up to 12 hours off with pay to the duly elected state representative, state delegate or designated

representative and state committee member to attend any monthly or special meeting of the state organization not to exceed two employees.

- §3. Pursuant to N.J.S.A. 40A:14-177, the City shall grant a leave of absence with pay to the duly authorized Association representatives to attend any state or national convention of such organization. A certificate of attendance to the State convention shall be submitted by the representatives so attending. Leave of absence shall be for a period inclusive of the duration of the convention with a reasonable time allowed for time to travel to and from the convention.

The FMBA would revise Section 3 to include:

9. With regards to Article 5, Section 3, (Association Representatives and Members and Delegates Rights) shall provide:
- a. The Union President and Union Executive Delegate shall be granted paid leave to attend all union related conventions and all state/regional meetings.
 - b. Three other members elected convention delegates shall be granted paid leave to attend all conventions.
 - c. Any member elected to state and/or regional office or executive board shall be given paid leave to attend conventions and meetings at the state or regional level.

The Union asserts that the City has impeded its members' use of union leave and that a grievance settlement with the City reflects that four (4) members were allowed to go to FMBA conventions. The City contends that the existing provision coupled with N.J.S.A. 40A:14-177 provides sufficient leave time.

Award

The Union has not established sufficient justification to alter the status quo, especially in light of the grievance settlement which it may use to enforce this provision. Accordingly, I do not award a revision to Article 5.

ARTICLE 24 – HEALTH BENEFITS

Both parties have presented health insurance proposals. Some are for the purpose of clarification and some are substantive.

The City has proposed to replace the words “family members” with the words “eligible dependents.” Article 24 contains several references to “eligible family members.” This proposal is an attempt to clarify existing language, avoid ambiguities as to “family members” and it does not restrict upon the scope of the City’s obligation. Accordingly, the proposal is awarded.

The City has proposed to revise Article 24, Section 1 to read:

The City shall pay the premiums for all health, prescription and dental insurances set forth in this Article except for any employee contribution or co-pay set forth herein or required by New Jersey Law.

This proposal clarifies the City’s obligations in regards to payment of premiums. It does not, standing alone, alter such contributions or co-pays and clarifies that the City is obligated to pay the premiums except for such legally required contributions or contractual co-pays. The Union has voiced no objection. Accordingly, it is awarded.

There appears to be no dispute as to certain other proposals. One is the transfer of unit employees to the AETNA HIF program. The proposal in the Union's last offer is simply a recognition that unit employees have been enrolled in the AETNA HIF program as a result of a March 2011 switch in health care plans by the City. A similar observation is made with respect to the Union's reference to the City's creation of an IRS Section 125, or cafeteria plan. The City acknowledges the existence of the plan and that there is no dispute over its continuation. Notwithstanding this, the Agreement contains no reference to such a plan and I award language that incorporates the cafeteria plan into the Agreement.

The Union's final offer includes comments on the issue of waiver of health care coverage. Such a program was agreed to in 2011 to save money, avoid layoffs and provide a payout to employees who opted out of dual coverage. Based upon the City's comments, it does not dispute the existence of the program. In the absence of a disagreement, no award on this issue is necessary.

The City has proposed to revise Section 4 to read:

Employees and their eligible dependents shall receive a basic dental care plan and choose from among a customary Delta 50/50 Dental Plan, Delta-Flagship Health Systems, Inc. or Delta Preferred Provider Option, or their successors.

This proposal appears to be for the purpose of clarifying that the dental coverage is for employees and their "eligible dependents" instead of employees and their "eligible

family members.” The reference to Eastern Dental is removed and no objection has been stated to the proposal. Accordingly, it is awarded.

The City has proposed to revise Section 2 to increase prescription co-pays from \$10.00 generic, including mail order to \$15.00 and to increase name brand including mail order from \$20.00 to \$25.00. The last increase to the prescription drug program was in 2008. The FMBA is the only unit out of nine (9) bargaining units that has remained at the lower co-pay. The City’s proposal would equalize the benefit for all City employees. I award this proposal with an effective date of no sooner than thirty (30) days after the date of the award.

The City has proposed to add a new section which would read as follows:

The City shall provide health insurance to all employees and their eligible dependents. The current health insurance plans are Aetna Direct Access \$5 (modeled after the HMO or equivalent plan) and Aetna Direct \$10 (modeled after the HMO or equivalent plan). Any employee enrolled in the Aetna Direct \$10 plan shall be required to pay the difference between the Aetna Direct Access \$10 plan premiums and the Aetna Direct Access \$5 plan premiums. Employees may transfer from plan to plan during open enrollment. The benefits are more specifically provided for and explained in a brochure available to employees.

Increase \$2 co-pays as follows:

Name brand, including mail-order
2012: \$25.00

Generic, including mail-order
2012: \$15.00

The City offers the following rationale for its proposal:

This proposal is partly for language clean-up, but more importantly this proposal would require employees to have the less expensive medical

plan, or pay the difference between plan premiums if the more expensive medical plan is chosen.

The City believes that during such time of economic distress, such proposal is perfectly suited to provide considerable healthcare savings while having very minimal effect on the employees' healthcare coverage (See Tab - Aetna). In fact, the Aetna Direct Access \$5 plan has lower copays than the Aetna Direct Access \$10 plan, hence the plan names.

The various unions have already agreed to similar language for new employees while grandfathering existing employees. These clauses were introduced into the various collective bargaining agreements from the year 2000 through 2002. The majority of employees have the Aetna Direct Access \$5 plan, while the more costly plan is being slowly phased out. The City sees no reason why some employees cling to the belief that something that is more expensive must be better. As the attachment shows, the in-network benefit of the \$5 plan is just as good if not better than the \$10 plan and the out-of-network lifetime cap differences will rarely if ever become an issue.

I award the City's proposal except for the inclusion of sentence number three that requires the payment of premium differences. That issue may be revisited in negotiations for the new Agreement.

Both parties acknowledge that legislation was enacted requiring unit members to contribute 1.5% of base salary towards health care benefits effective May 21, 2010 pursuant to P.L. 2010, Chapter 2 and on June 28, 2011, there was additional legislative action that addressed the issue of employee health insurance contributions. This award must be consistent with law because N.J.S.A. 34:13A-16g(5) and (9) require the arbitrator to consider the Township's lawful authority and statutory limitations. One such legal requirement is to implement Chapter 2 and Chapter 78 in accordance with their terms. Although this issue is not in dispute, the Award will reflect that health care contributions for unit employees shall be consistent with that required by P.L. 2010,

Chapter 2 and P.L. 2011, Chapter 78. Article 24 shall be modified to incorporate this language into the Agreement.

ARTICLE 21 – OVERTIME

The City and the FMBA each have proposals to modify Article 21 – Overtime. The main focus of their proposals concerns issues relating to compensatory time. The existing language concerning compensatory time is as follows:

- §4. Compensatory time shall be earned in lieu of overtime payments pursuant to FLSA at the request of an employee. The use of compensatory time shall be requested in writing by an employee to the Director of Fire, Fire Chief or their designee. The request shall be granted so long as the employee's absence does not unduly disrupt the operations of the Department. Employees who have 144 or more compensatory time hours accumulated in any calendar year shall need the approval of the Director of Fire or Fire Chief to earn additional compensatory time in lieu of overtime payments.

The City proposes that it have the ability to “freely” buy back compensatory time.

The City submits the following argument in support of its proposal:

The City has from time to time bought back compensatory time from employees if funds permit it. The City believes this is a good practice, because accrued compensatory time represents a liability to the City. Therefore, any time the City can pay down its debt, it becomes a financially prudent move to do so. The buy-back may also be at a higher rate for employees if an employee's salary at the time of the buy-back is greater than at the time the compensatory time was earned.

Also, unique to public safety positions, compensatory time has a tendency to pyramid out of control due to minimum staffing requirements. For example, if a firefighter earns 24 hours of compensatory time and takes a comp-shift off, and the City has to replace those 24 hours at the overtime rate, then 36 hours of compensatory time might be earned by another employee. Those 36 hours might turn into 54 hours for another employee,

and such pyramiding would eventually create a financial hardship to the City.

The City believes it complies with the FLSA and the FMBA-49 agreement when it buys back compensatory time, but the Union does not share the same point of view. The agreement specifies that up to 144 compensatory hours may be earned, but it is silent on buy-back authority. The City notes that the FLSA expressly provides such authority to "freely" buy back compensatory time in whole or in part (See Tab – FLSA).

The FMBA urges rejection of the City's proposal and offers its own proposal concerning compensatory time. Its proposal is as follows:

The Union proposes to remove from Article 21, Section 4, paragraph 1 and create a new Article named Compensatory Time, and introduce the following language into this new article:

- a. Section 1 – Compensatory Time shall be earned in lieu of overtime payments pursuant to the FLSA at the request of a firefighter.
- b. Section 2 – Firefighters are permitted to accumulate 144 hours of compensatory time. Firefighters who have accumulated more than 144 hours shall need the approval from the Chief of the Department or Director of Fire to earn additional compensatory time.
- c. Section 3 – Firefighters accumulating more than 144 hours shall have the option to:
 - i. Schedule the use of compensatory time to get below 144 hours or,
 - ii. Allow the City to issue a check to the Firefighter in the amount of the number of hours over 144.
 - iii. Continue to bank compensatory time as agreed.
- d. Section 4 – The City shall notify all Firefighters that have earned over 144 hours no later than June 1 that they will be issued a check. The Firefighter shall notify the City no later than June 15 if they intend to schedule the time in lieu of receiving a check, or continue to bank time as agreed.

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

The testimony from the FMBA has been that there have been issues regarding compensatory time accumulation use and buy back by the City. It was testified too that there has been an agreement reached but it has to be included into the contract that firefighters are allowed to accumulate 144 hours. Transcript, Pg 90 L10. The FMBA is seeking language that members can request a payout and if there is any issues with accumulation or they can be told and allowed to use it.

There have been some issues in the past where firefighters were told by the department that they want individuals to lower their comp time banks but were not given them the time to do it. No member of the FMBA had previously asked to be paid out for the compensatory time. The members of the FMBA are trying to create a bank that they can accumulate and then use without incurring additional expense to the City.

Award

The parties recognize that the need to maintain adequate staffing levels requires the use of overtime and/or the granting of compensatory time. The record shows some inconsistency with respect to prior practices. As currently phrased, the Agreement initially gives an employee the choice subject to a determination that the "absence does not unduly disrupt the operation of the Department." The Agreement goes on to grant discretion to the Director and/or the Fire Chief or their designee as to whether to approve an employee's ability to take additional compensatory time in lieu of overtime payments if that employee has already accumulated 144 or more hours of compensatory time in any calendar year. Thus, the City has the right to "buy back" such time when the bank exceeds 144 hours.

Given this, the City's proposal to freely "buy back" any and all compensatory time would impede an employee's ability to accumulate any compensatory time. All

compensatory time would be conditioned upon the City's approval because any and all compensatory time earned could be eliminated if the City chooses to pay the employee for the time earned rather than granting compensatory time. Having reviewed the parties' respective proposals, I award the continuation of the status quo and do not award neither the City's proposal nor the Union's.

ARTICLE 17 – SICK LEAVE

The City has made two proposals to modify article 17 – Sick Leave. The first proposal would "make Worker's Compensation consistent with State minimum 70%" and thereby modify Article 17, Section 1(a)(4)(b) that requires full salary to be paid. According to the City, employees would have a greater incentive to return to work if its proposal were to be awarded. Its proposal corresponds to a recommendation made by Local Government Budget Review.

The Union opposes the proposal. It submits that the City has provided no evidence to support any suggestion of employee abuse or costs associated with the existing benefit. It further notes the damages and hazards associated with firefighting and that if an instance of abuse is suspected, the City has the ability to verify and discipline any unit member.

Award

The issue presented is one that must be reviewed and resolved on the record evidence presented. In this instance, there is a theoretical basis that supports the proposal but insufficient evidence that there has been any abuse of the existing provision or that its costs have become burdensome. I do not award the proposal for the contract period without prejudice to the ability of the parties to review the issue in future negotiations.

The City also proposes to add new language to Article 17, Section 4 as follows:

"The FMBA 49 shall actively discourage the abuse of sick time by employees" and "FMBA 49 further acknowledges that the City, through the Fire Chief or designee, may adopt such sick leave and verification policies from time to time to control sick leave abuses as it may determine necessary. Patterns of absences may be considered abuse and shall include but not be limited to an employee being absent on the same day each year or excessive absences that extend non-working shifts or other leaves of time." Also add "or whenever there is reason to believe that the employee is abusing sick leave" below the line reading "two consecutive tours or more than five times in a calendar year."

The Union objects to the proposal and observes that the City, pursuant to case law, has the right to adopt sick leave verification policies which includes the monitoring of patterns of absence.

Award

While there can be no disagreement that sick leave should not be the subject of abuse, the City has not established that it has exercised its lawful and contractual

authorities to monitor the use of sick leave to protect the City from sick leave abuse. Accordingly, I do not award the City's proposal.

Article 4 – Maintenance of Standards

The Union has proposed to add language to Section 1 and Section 2 that would confirm that both Sections must be read to be consistent with federal and state laws and privileges. Because Article 4, as written, recognizes adherence to New Jersey State and Federal law, the language proposed by the Union is not necessary and the proposal is not awarded.

Salary

The parties have sharp disagreements as to the salary terms for the new contract duration. The FMBA has proposed:

Step	12/31/08	1/1/09 2%	7/1/09 1.75%	1/1/10 2.0%	7/1/10 1.15%	1/1/11 2.0%	7/1/11 0.0%	1/1/12 1.5%	7/1/12 0.75%	1/1/13 1.5%	7/1/13 0.5%	1/1/14 1.25%
1	\$34,462	\$35,151	\$35,766	\$36,661	\$37,082	\$37,824	\$37,824	\$38,391	\$38,679	\$39,259	\$39,456	\$39,949
2	\$36,912	\$37,650	\$38,309	\$39,267	\$39,718	\$40,513	\$40,513	\$41,120	\$41,429	\$42,050	\$42,261	\$42,789
3	\$41,595	\$42,427	\$43,169	\$44,249	\$44,757	\$45,653	\$45,653	\$46,337	\$46,685	\$47,385	\$47,622	\$48,217
4	\$43,910	\$44,788	\$45,572	\$46,711	\$47,248	\$48,193	\$48,193	\$48,916	\$49,283	\$50,022	\$50,273	\$50,901
5	\$50,915	\$51,933	\$52,842	\$54,163	\$54,786	\$55,882	\$55,882	\$56,720	\$57,145	\$58,003	\$58,293	\$59,021
6	\$54,983	\$56,083	\$57,064	\$58,491	\$59,163	\$60,347	\$60,347	\$61,252	\$61,711	\$62,637	\$62,950	\$63,737
7	\$64,252	\$65,537	\$66,684	\$68,351	\$69,137	\$70,520	\$70,520	\$71,578	\$72,114	\$73,196	\$73,562	\$74,482
8	\$66,649	\$67,982	\$69,172	\$70,901	\$71,716	\$73,151	\$73,151	\$74,248	\$74,805	\$75,927	\$76,306	\$77,260
9	\$67,934	\$69,293	\$70,505	\$72,268	\$73,099	\$74,561	\$74,561	\$75,679	\$76,247	\$77,390	\$77,778	\$78,750
10	\$70,354	\$71,761	\$73,017	\$74,842	\$75,703	\$77,217	\$77,217	\$78,375	\$78,963	\$80,148	\$80,548	\$81,555

The City has proposed:

Step	2008	2009	2010	2011	2012
1	\$34,462	\$35,151	\$35,854	\$35,854	\$35,854
2	\$36,912	\$37,650	\$38,403	\$38,403	\$38,403
3	\$41,595	\$42,427	\$43,276	\$43,276	\$43,276
4	\$43,910	\$44,788	\$45,684	\$45,684	\$45,684
5	\$50,915	\$51,933	\$52,972	\$52,972	\$52,972
6	\$54,983	\$56,083	\$57,205	\$57,205	\$57,205
6.5				\$60,027	\$60,027
7	\$64,252	\$65,537	\$66,848	\$66,848	\$66,848
8	\$66,649	\$67,982	\$69,342	\$69,342	\$69,342
9	\$67,934	\$69,293	\$70,679	\$70,679	\$70,679
10	\$70,345	\$71,761	\$73,196	\$73,196	\$73,196

The City has also proposed a new guide for new employees:

Step	2011	2012
1	\$35,854	\$35,854
2	\$38,403	\$38,403
3	\$43,276	\$43,276
4	\$45,684	\$45,684
5	\$49,328	\$49,328
6	\$52,972	\$52,972
6.5	\$57,205	\$57,205
7	\$62,027	\$62,027
8	\$66,848	\$66,848
9	\$69,342	\$69,342
10	\$70,679	\$70,679
Description:		
Drop Top Step		
Add Step Between 4 and 5		
Add Step Between 6 and 7		
Freeze 2011 Rates		

I have previously set forth the parties' main themes that surround the salary issue. For the reasons that follow, I have concluded that the evidence supports a salary award that is greater than what the City has proposed but less than what the FMBA has proposed.

The FMBA relies principally upon external comparability and its conclusion that the City has the financial ability to fund its proposal without adverse financial impact and within its lawful spending and taxing limits. It points to a comparability analysis of departments it deems comparable:

	2009	2010	2011	2012	2013
Mt. Laurel + IAFF 4408	76,064.00	N/A	N/A	N/A	N/A
Evesham; FF/EMT (hire by 1/1/09)	75,831.60	78,296.13	81,232.23	84,440.91	87,776.32
Evesham; FF/EMT (hire after 1/1/09)	75,831.60	78,296.13	81,232.23	84,440.90	87,776.32
Margate + FMBA 41	74,019.00	77,165.00	N/A	N/A	N/A
North Wildwood + FBA 56	72,084.00	73,525.00	74,996.00	N/A	N/A
Millville + FMBA 3 (hire by 1/1/02)	69,881.01	72,536.48	75,292.86	N/A	N/A
Millville + FMBA 3 (hire after 1/1/02)	69,881.01	72,536.48	75,292.86	N/A	N/A
Millville + FMBA 3 (hire after 1/1/04)	69,881.01	72,535.48	75,292.86	N/A	N/A
Glouc. Twp. + IAFF (hire by 1/1/07)	65,976.00	68,615.00	N/A	N/A	N/A
Glouc. Twp. + IAFF (hire after 1/1/07)	65,976.00	68,615.00	N/A	N/A	N/A
Bridgeton + IAFF 4822	65,637.00	67,771.00	69,973.00	N/A	N/A
Deptford + IAFF 3592	64,173.21	N/A	N/A	N/A	N/A

The Union's chart tends to supports a salary award greater than the City proposed and, in particular, the denial of a wage freeze in 2011 and 2012. However, the figures are not as persuasive as claimed by the Union for several reasons. There is insufficient analysis that the municipalities in the chart meet comprehensive guidelines set in the PERC rules for determining the merits of comparability arguments. In addition, many of the contracts cited do not contain contract terms that set wages between 2010 and 2013. Also, a review of PERC data on wage trends shows significant decreases in those contract years for contracts entered into by voluntary agreement or by award during the time periods included in the chart. The data submitted also assumes that greater weight should be given to contract terms negotiated outside the borders of the City of Vineland than terms that have been negotiated internally within the City of Vineland. The data also does not reflect a

comparison between the cost and value of step increases that, for this unit, are 8.83% in 2009, 6.5% in 2010, 2.79% in 2011, 2.45% in 2012 and 2.1% in 2013. Given the fact that the new agreement must be funded by the City, I am persuaded that wage terms must be set based upon the City's own financial circumstances rather than by giving greater weight to external comparables.

The City's proposal is based in its most substantial part on its budgetary claims that it cannot absorb additional costs beyond what it has proposed. The City urges that no weight be given whatsoever to agreements negotiated beyond the boundaries of the City and, despite submitting contracts into evidence including the City's police superiors and fire officers, it has not proposed terms that are reasonably consistent with what it has voluntarily negotiated.

For the reasons that follow, I conclude, with due regard for the statutory criteria I deem to be the most relevant, that a reasonable determination of the salary issue, is as set forth below:

Step	7/1/09 2.0%	7/1/10 2.0%	7/1/11 2.0%	7/1/12 2.0%	7/1/13 0.0%
Step movement in all contract years					
1	35,151	35,854	36,571	37,303	37,303
2	37,650	38,403	39,171	39,955	39,955
3	42,427	43,275	44,141	45,024	45,024
4	44,788	45,684	46,598	47,530	47,530
5	51,933	52,972	54,031	55,112	55,112
6	56,083	57,204	58,348	59,515	59,515
6.5					64,531*
7	65,537	66,848	68,185	69,548	69,548
8	67,982	69,342	70,728	72,143	72,143
9	69,293	70,679	72,092	73,534	73,534
10	71,761	73,196	74,660	76,153	76,153

* The added step 6.5 shall be effective at the December 31, 2013 date of contract expiration and not impact on step movement in contract year 2013 and specifically those who have moved from Step 6 to Step 7.

The City's budgetary posture does not support costs higher than what I have awarded. The City has experienced dramatic losses in its fund balance. These numbers are reflected in the following chart:

City of Vineland Fund Balance Summary			
<u>Year End Fund Balances</u>	<u>6/30/2011</u>	<u>6/30/2010</u>	<u>6/30/2009</u>
Electric Utility	13,710,285.34	13,853,683.88	16,447,298.37
Water & Sewer Utility	853,219.50	1,433,787.03	5,549,234.75
Current Fund	6,389,346.70	7,781,662.91	9,795,208.12
	<u>20,952,851.54</u>	<u>23,069,134.82</u>	<u>31,791,741.24</u>
Decrease	2,116,283.28 9.2%	8,722,606.42 27.4%	
Fund Balance Loss from 6-30-2009		10,838,889.70 34.1%	

The Union accurately notes that the budgetary data shows that the City has not raised tax revenues up to the level of its statutory tax cap levy. This argument does support the Union's claim for additional wages beyond what the City has proposed, but does not dictate that its own proposal be awarded. The latitude for increased taxation that exists as a matter of law does not supersede the taxpayers' ability to absorb a higher level of taxation. The record reflects that the City has imposed a higher level of taxes for local purposes that, although lawful due to exclusions and the need to meet demands for City services, exceed the percentages set forth in the statutory limitations. However, its ability to exercise greater taxing authority is not a basis for a higher award

due to the substantial increases in taxes that the City has been required to impose. The leveling of the overall tax rate has masked the unusually high increases in the municipal tax rate. This fact is reflected in the following chart:

City of Vineland
Recent Tax Levy History
Local Purpose Tax Only (City Budget)

<u>For the Year Ending</u>	<u>Tax Levy</u>	<u>Change</u>	<u>%</u>
June 30, 2007	21,835,304.94		
June 30, 2008	22,796,569.01	961,264.07	4.4%
June 30, 2009	24,979,507.18	2,182,938.17	9.6%
June 30, 2010	26,159,396.70	1,179,889.52	4.7%
June 30, 2011	27,910,264.43	1,750,867.73	6.7%
Change in the past four years		6,074,959.49	27.8%

I have also considered weight to internal settlements. I am persuaded that the most weight should be given to the voluntary settlement between the City and the FMBA Local 249 (Fire Officers) for the period January 1, 2010 to December 31, 2013. The relationship between fire officers and rank and file has some significance given the fact that they are paid from the same budgetary line item and operate under common managerial supervision. This does not dictate precise equivalency or parity, especially in light of the fact that the contract years are not identical. However, reasonable consistency is warranted based upon the internal comparability data. Between 2010 and 2013, fire officers received increases of 3%, 1.5%, 1.5% and 0.0% but received no retroactivity for the 3% contract year in 2010. This represents a 1.5% annual increase in the rates of pay. This Award of 2%, 2%, 2%, 2% and 0.0%, represents a 1.6% average, exclusive of step movement. Step movement costs have been cited above

and are considerable, especially in 2009 and 2010. I have also not included a no retroactivity provision, although the financial impact criteria requires effective dates for increases in all years of July 1. I also find it reasonable to amend the salary schedules to provide a split between Steps 6 and 7 to modify the existing \$10,000 bubble between those steps. The effective date of the split shall be at the end of the Agreement to avoid any direct impact on employees who have moved between these steps in each of the five contract years. Beyond this reason, I do not award the City's proposal for a new salary schedule for new hires. The revision adding the additional step between Steps 6 and 7 represents sufficient modification during this contract term. I leave the parties the right to address any further revisions during negotiations for the next agreement.

The 2008 base salary cost for unit members was \$1,087,005. Under the parties' respective proposals, the following cost differences between their proposals appear based upon the City's calculations¹:

	FMBA	City	\$ Difference
2009	1,212,703	1,204,773	7,930
2010	1,259,194	1,230,574	28,620
2011	1,327,905	1,264,939	62,966
2012	1,391,242	1,295,987	65,265
2013	1,476,038	--	--
2014	1,519,155	--	--

¹ The cost differences include the City's removal of the costs of a firefighter who retired in 2010. By deducting this cost, the City's calculations underestimate what the actual cost differences would be had he not retired.

	FMBA	City	% Difference
2009	11.56%	10.83%	0.73%
2010	3.83%	2.14%	1.69%
2011	5.46%	2.79%*	2.67%
2012	4.77%	2.45%*	2.32%
2013	6.09%	2.10%*	3.99%
2014	2.92%	--	--

*increment only cost

The costs of the award² are \$1,204,773 in 2009, \$1,230,574 in 2010, \$1,290,237 in 2011, \$1,352,039 in 2012 and \$1,380,431 including increment costs of 8.83% in 2009, 6.5% in 2010, 2.79% in 2011, 2.45% in 2012 and 2.1% in 2013.

The interests and welfare of the public are best served by an award that provides reasonable increases at a cost that does not place undue stress on the City's finances, nor compel the City to exceed its taxing or spending limitations imposed by law. All employees will receive full step increases and the maximum salary will increase from \$70,354 to \$76,153 over the life of the Agreement. The increases will maintain reasonable consistency with the negotiated changes in the fire officer's agreement. I deem these criteria to be accorded the most weight, although I have considered overall compensation, cost of living and continuity and stability of employment.

² The costs reflect the full cost of step movement in each year and the annualized cost of percentage across the board increases. The July 1 effective dates will reduce the across the board costs by one-half for the year of the increase with the full cost assumed in all following years.

The overall percentages awarded, including the costs of step movement, exceed the cost of living but the across the board increases fall within the range of CPI between 2009 and 2013. The Award has not materially changed the comprehensive wage and benefit package presently being received and thus has substantially maintained the pre-existing contract levels for overall compensation. The record does not reflect that there has been instability in the employment of unit firefighters and the movement of firefighter through the salary guide, coupled with the across the board increases, will maintain the continuity and stability of employment in the bargaining unit.

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

AWARD

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

2. **Duration**

There shall be a five-year agreement effective January 1, 2009 through December 31, 2013.

3. **Article 11 – Pay Period**

The City shall have the right to enroll unit employees in a Direct Deposit plan upon 60 days notice and proof that the program has been implemented for all unit employees in the police and fire departments.

4. **Article 15 – Travel Allowances**

The following language in Section 1 shall be removed:

"Should the Travel Policy adopted on January 2, 2003 be revised, the benefits granted by it shall not be diminished."

5. **Article 25 – Grievances**

At the conclusion of the Step 3 answer, the Union shall have 30 calendar days to submit the grievance to arbitration. If the Union does not submit the grievance to arbitration within 30 days, the grievance shall be considered resolved by the Step 3 answer, and arbitration shall be considered forfeited.

6. **Article 12 – Vacation**

The first sentence of §1 shall be revised to read:

All 24/48 employees shall receive the following annual vacation leave with pay **for their continuous service with the City**, except as otherwise provided:

"Continuing service" shall include all authorized leaves of absence but shall exclude prior service for those employees who have voluntarily resigned or have been terminated from employment. This provision may be waived on a case by case basis upon mutual agreement between the City and the Union.

7. **Health Care Contributions**

Health care contributions for unit employees shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78.

8. **Article 24 - Health Insurance**

1. Where applicable, replace "eligible family members" with "eligible dependents."

2. Article 24 shall reflect the existence of a cafeteria plan.

3. Section 4 shall be revised to read:

Employees and their eligible dependents shall receive a basic dental care plan and choose from among a customary Delta 50/50 Dental Plan, Delta-Flagship Health Systems, Inc. or Delta Preferred Provider Option, or their successors.

4. Section 2 shall be revised to increase prescription co-pays from \$10.00 generic, including mail order to \$15.00 and to increase

name brand including mail order from \$20.00 to \$25.00 no sooner than thirty (30) days after the date of the award.

5. Add the following language:

The City shall provide health insurance to all employees and their eligible dependents. The current health insurance plans are Aetna Direct Access \$5 (modeled after the HMO or equivalent plan) and Aetna Direct \$10 (modeled after the HMO or equivalent plan). Employees may transfer from plan to plan during open enrollment. The benefits are more specifically provided for and explained in a brochure available to employees.

Increase \$2 co-pays as follows:

<u>Name brand, including mail-order</u>	<u>Generic, including mail-order</u>
2012: \$25.00	2012: \$15.00

9. **Salaries**

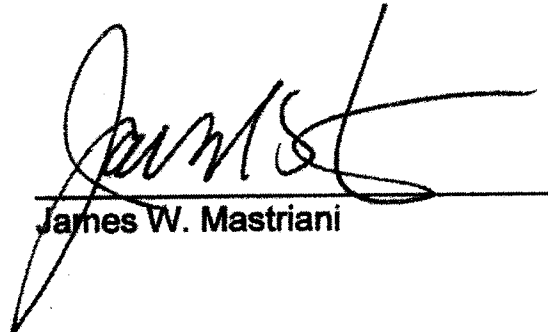
The existing salary schedule shall be adjusted by the following amounts effective and retroactive to each July 1 effective date for each contract year. Employees shall receive step movement in all contract years. All increases shall be at each step of the salary schedule and shall, except for those who have voluntarily resigned or have been separated from employment without good standing, apply to all unit employees and those who have retired on normal or disability pension. The salary schedule shall read as follows:

Step	7/1/09 2.0%	7/1/10 2.0%	7/1/11 2.0%	7/1/12 2.0%	7/1/13 0.0%
Step movement in all contract years					
1	35,151	35,854	36,571	37,303	37,303
2	37,650	38,403	39,171	39,955	39,955
3	42,427	43,275	44,141	45,024	45,024
4	44,788	45,684	46,598	47,530	47,530
5	51,933	52,972	54,031	55,112	55,112
6	56,083	57,204	58,348	59,515	59,515
6.5					64,531*
7	65,537	66,848	68,185	69,548	69,548
8	67,982	69,342	70,728	72,143	72,143
9	69,293	70,679	72,092	73,534	73,534
10	71,761	73,196	74,660	76,153	76,153

* The added step 6.5 shall be effective at the December 31, 2013 date of contract expiration and not impact on


step movement in contract year 2013 and specifically those who have moved from Step 6 to Step 7.

Dated: November 12, 2013
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 12th day of November, 2013, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 4/30/2014

