

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

- - - - - \*  
In the Matter of the Interest \*  
Arbitration between \*  
\*  
\* DECISION  
\* AND AWARD  
CITY OF CAMDEN \*  
\*  
\*  
-and- \*  
\* Docket No.  
\* IA-2009-069  
INTERNATIONAL ASSOCIATION OF \*  
FIRE FIGHTERS, LOCAL 2578 \*  
\*  
\*  
- - - - - \*

Before: Joel M. Weisblatt, Arbitrator

Appearances:

For the City  
Brown & Connery  
By: William M. Tambussi, Esquire  
Michael J. DiPiero, Esquire  
Michael J. Watson, Esquire

For IAFF, Local 2578  
Loccke, Correia, Limsy & Bukosky  
By: Richard D. Loccke, Esquire

**D E C I S I O N**

The City of Camden (the "City" or the "Employer") and the International Association of Fire Fighters, Local 2578, Fire Supervisors Unit (the "IAFF" or the "Union") are parties to a collective bargaining agreement which had a duration through December 31, 2008. Negotiations for a successor agreement reached an impasse and a Petition to Initiate Compulsory Interest Arbitration was filed on March 9, 2009. The dispute was initially assigned to a different arbitrator who subsequently withdrew from the appointment. Pursuant to the then existing Rules and Regulations of the Public Employment Relations Commission, the undersigned Arbitrator was duly appointed on March 10, 2011 to serve in this matter.

Allowing some time for the rank and file interest arbitration to proceed [Docket No. IA-2009-065], the Arbitrator first met with the parties on January 17, 2012, in an effort to assist them in achieving a voluntary resolution to their dispute. The impasse

persisted. Evidentiary hearings were scheduled and held on April 12, 2012, April 13, 2012 and June 6, 2012.

The parties were provided the opportunity to argue orally, present documentary evidence and examine and cross-examine witnesses. An extensive record was created over the course of the three days of hearing. Witnesses with an expertise in fire fighting or in municipal finance were examined and cross-examined on the record. A voluminous amount of documentary evidence was also introduced in produced. Both parties have submitted written, post-hearing briefs presenting arguments in support of their proposals and addressing those of the other side.

The entire record has been carefully considered. The evidence has been evaluated in light of the nine statutory criteria set forth in *N.J.S.A. 34:13A-16(g)*.

The parties failed to mutually agree to a terminal procedure. Therefore, under *N.J.S.A. 34:13A-(d)(2)* the dispute shall be resolved through a determination by

conventional arbitration. This resolution shall be reached through application of all of the relevant statutory criteria, giving due weight as appropriate, to the issues presented by the unsettled elements in dispute.

It is significant, as a matter of background, to point out that the rank and file Fire Fighters bargaining unit, IAFF Local 788, reached impasse with the City and proceeded to an interest arbitration determination of the issues in dispute. That Decision and Award, Docket No. IA-2009-065, was issued on August 16, 2011. The City appealed the decision to the Public Employment Relations Commission ("PERC"). PERC issued a Commission Decision, PERC 2012-018, on October 27, 2011, affirming the interest arbitration award. The matter was then appealed by the City to the Appellate Division of the Superior Court, where a decision is still pending.

### **Statutory Criteria**

N.J.S.A. 34:13A-16(g) provides as follows:

g. The arbitrator or panel of arbitrators shall 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 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 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 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 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 other such factors not confined to the foregoing which are ordinarily or traditionally considered in the determinations 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).

## **Final Offers of the Parties**

### Final offer of the IAFF

The Union's Final Offer consists of four components, as follows:

1. **Term** - The IAFF proposes a contract term commencing January 1, 2009 through December 31, 2014. Except as modified by the Award the preceding Agreement would continue in full force and effect.
2. **Wage Increase** - The IAFF proposes a wage increase of three percent (3%) across-the-board effective on each successive January 1st over each year of the contract.
3. **Overtime Definition** - The IAFF proposes that overtime be defined as time and one-half (1-1/2) compensation for all work performed beyond the regularly scheduled work day or work on a regular day off. A regular day off shall be defined as regular days off scheduled on the posted Annual Work Schedule.
4. **Grievance Procedure** - The IAFF proposes a modification of Article XIV, Step Four, Paragraph B of the Grievance Procedure by deleting said provision.



Final Offer of the City

The components of the City's Final Offer are as set forth below:

1. **Duration**

5 Years - January 1, 2009 through December 31, 2013.

2. **Article IV - Retirement:** Amend the current language as follows:

Delete Section 2 (terminal leave)

Section 3 - Employees retiring on either regular or disability pension shall be paid for all accumulated holiday and vacation; said payments computes at the rate of pay based upon the annual compensation due and owing during the last year of his/her employment prior to the effective date of his/her retirement. Effective December 31, 1996, all accumulated days shall be frozen and future accumulation of days shall occur as set forth in this Agreement.

Section 5 - Employees retiring on either age and service or disability pension shall be paid a lump sum payment as supplemental compensation for each full day of earned and unused accumulated sick leave which is credited to him/her on the effective date of his/her retirement. The supplemental compensation payment to be paid hereunder shall be computed at the rate of one-half (1/2) of the daily rate of pay for each day earned and unused accumulated sick leave, based upon the annual compensation received during the last year of employment prior to the effective date of his/her retirement. There shall be no limit on lump sum supplemental compensation

payments. Effective July 1, 2012, this sum shall not exceed a total payment of \$15,000.

Delete Section 6 (payouts exceeding \$45,000).

Section 10 Accumulated Vacation-Holiday - All accumulative vacation and holidays on the books as of December 31, 1996 shall be carried over and paid out at the employee's salary rate at retirement, first in, first out shall apply, subject to the limitations in Article VII and the \$15,000 cap set forth in Section 6.

**3. Article VII - Vacation:** Amend the Article as follows:

Section 3 - Vacation time must be taken in the year earned. When vacation time is affirmatively deferred by the City in writing to the employee for any reason other than the fact that such period has been previously granted in accordance with Section 1 of this Article, then the employee shall be entitled to utilize such vacation time at a later period in the same calendar year or to be paid for the same. Where vacation time is not deferred by written notice to the employee, said vacation days shall expire at the end of the following calendar year in which the days were earned.

Section 4 - Notwithstanding any provisions to the contrary, an employee may accumulate fifteen (15) vacation days in the calendar year to be carried over in the following calendar year. Days not utilized or otherwise affirmatively deferred by the City shall expire without compensation at the end of the following calendar year after said days are earned. This section shall be applied retroactively effective January 1, 2009 to all vacation time accrued after December 31, 1996.

**4. Article XIV - Grievance Procedure:** Amend "Step 4"

(Only) as follows:

The costs of the arbitrator's services shall be borne equally by the parties regardless of the outcome.

**5. Article XXVI - Wages:** Amend the Article as follows:

Section 1 - The wages for employees shall be as provided in Schedule A, attached hereto and made part hereof, as provided for by an Ordinance to be adopted and reflect the following:

Effective July 1, 2012 all salaries for the term of this agreement shall be frozen.

Section 3 - The practice of appointing employees to higher ranks in an acting capacity is discouraged. Any employee required to act in such higher ranking capacity after the completion of five consecutive full shifts of work, shall receive pay commensurate with such position in which he/she acts.

The employee to be appointed temporarily to the higher ranking position shall be the employee who is placed highest on the current NJ Department of Personnel promotional list within his/her respective unit. At such time when there is no standing promotional list, employees to be appointed to the higher ranking position shall be the most senior employee in the Department assigned to that particular unit.

**6. Article XXX - Insurance, Health and Welfare - Amend**

the Article as follows:

Section 1 - The City shall continue to maintain and provide all insurance coverage as provided and set forth in the Plan Document. The City shall have the right to change insurance providers provided that the Plan is substantially similar or better than the Plan provided at the commencement of the agreement.

Section 3 - Notwithstanding other provisions of this Article, the City of Camden shall continue its Health Benefits Program, including all benefit and coverage levels, usual and customary rates and deductible charges for its employees and their families, subject to the conditions set forth in this Section.

Effective May 22, 2010, all employees shall contribute 1.5% of their base salary toward the cost of their insurance benefits. Effective June 28, 2011, all employees shall make contributions toward the cost of their insurance benefits in the amounts set forth in P.L. 2011 C.78.

All employee premium contributions shall be deducted on a pre-tax basis as permitted by law. The City of Camden shall establish a Cafeteria Plan in accordance with the rules set forth by the Internal Revenue Service.

Section 4 - Major Medical deductions shall be established on the basis of one hundred dollars (\$100.00) per year for individual coverage and two hundred and fifty dollars (\$250.00) per year for family coverage. The major medical lifetime maximum cap for current employees and retirees shall be one million dollars (\$1,000,000.00) to the extent permitted by law.

Section 5 - Notwithstanding other provisions of this Article, the City reserves the right to change its Health Benefit Program and Benefit Administration so long as the benefits provided are substantially similar or better and that prior to such change that the City provide thirty (30) days notice to the Union/Association for the purpose of review and comparison of all benefit

and coverage levels, usual and customary rates and deductible charges.

The City will provide the Union/Association any and all plan documents of the current and proposed plans and allow the Union/Association to have contact with any proposed Insurance Carrier or Health Benefit Plan Administrators during the notice period however, the City is not obligated to engage such Carriers or Administrators.

**7. Article XXXVI - Longevity:** Effective December 31, 2012, all longevity payments shall be eliminated for all employees both current and future.

**8. Article XXVII - Pay Period:** Amend the Article as follows:

Section 1 - Employees shall be paid every two (2) weeks for a period of fifty-two (52) weeks in accordance with the provisions of City Ordinance. However, on years where the total number of pay periods exceed twenty-six (26), employees shall be paid in twenty-seven (27) equal installments.

## **Positions of the Parties**

### Position of the Union

The IAFF contends that its final offer presents a reasonable basis for the resolution of the impasse herein. It points out that this proceeding, due to the initial filing date, is governed by the Interest Arbitration Act and Rules in effect prior to the revision of the statute that took place in December of 2010.

The Union asserts that the length of the term of the contract is a "key element" of the substance of the dispute, noting a "clear need for an extended term." The IAFF suggests that this lengthy term is "almost necessitated by the time that has passed."

The IAFF stresses the public interest criterion in its arguments. It emphasizes the evidence of the high standards and professionalism of the bargaining unit's performance under very difficult circumstances for fire protection. The Union expresses a commitment to saving

structures and lives of residents in a daunting physical environment where many structure are connected and many others are abandoned. However, due to the reality of housing in the City, many of the apparently abandoned structures serve as living quarters to a substantial homeless population. This segment of the residential population of the City is at particular risk requiring a well-trained, professional response to a fire. The Battalion Chief who testified at hearing exclaimed that the citizens of Camden are "our people, we work for them."

The Union notes that the bargaining unit members have expertise, training and equipment that "is virtually unparalleled in the region." That these factors lead to assistance to other communities and services in the area.

The IAFF places great emphasis upon the fact that its unit members perform their very demanding tasks at staffing levels that have been dramatically reduced from prior years. It relies upon the details of Exhibit U-9 to show that the current staffing is set at

42 employees: 8 Fire Captains; 25 Senior Fire Captains; 8 Senior Fire Battalion Chiefs and 1 Fire Official.

The Union points out that Exhibit U-7 establishes that there were 54 Fire Captains and 10 Battalion Chiefs in 2008. There has been a reduction, it calculates, of 23 employees in the bargaining unit.

The IAFF tracks the specific unit staffing changes from January 1, 2011 through March 30, 2012 to establish that, in that period alone, there have been 9 retirements and an additional 4 employees promoted out of the bargaining unit. The Union maintains that the reduction of the bargaining unit since 2008 has established a lower base salary cost to the City, \$2,450,811 below 2008 salary rates.

With respect to the comparability criterion, the IAFF stresses the fact that it is the only uniformed services group without a salary increase in place for the year 2009. It asserts that the police rank and file unit and the police superior officers unit each have received 3.75% salary rate increases effective January 1, 2009. It further points out that the



interest arbitration award covering the rank and file fire fighters unit (that this unit supervises) received a 2.5% increase for 2009, followed by 2.0% increases for 2010, 2011 and 2012, respectively.

The Union places substantial emphasis on the fact that the interest arbitration award covering rank and file Fire Fighters has been upheld on appeal [at PERC, Exhibit U-21] and that although it is still awaiting a further appeal determination from the Appellate Division, the salary increases (and the award as a whole) have been fully paid and implemented.

The IAFF insists that the City has not provided any evidence to support its position of a total wage freeze over a five year period. It notes that the Employer's own voluntary settlement with police units and the ability to pay out the rank and file fire fighters award belies any justification of the proposed wage freeze for this, the smallest uniform services unit in the City.

The Union further addresses the impact of Chapter 78, P.L. 2011 on bargaining unit members. It maintains that the wage freeze sought by the City would, in clear terms, actually provide a significant negative impact on terms and conditions of employment. It further argues that Chapter 78 will produce a "windfall" for the Employer in the form of reduced pension contributions and reduced health insurance premium costs. It calculates this "windfall" for the City to equal about 7% of salary.

The IAFF argues that the change sought with respect to overtime could be characterized as an effort to comply with law and is not, therefore, "a discretionary change." It further suggests that the change would bring about conformity with the Police Supervisors contract. The Union stresses that it is the rate of time and one-half, rather than straight time pay, that is in question under its proposal.

With respect to the statutory criteria that relate to the lawful authority of the employer, the Union insists that there is no impediment to the awarding of

its final offer. It points out that the total unit salaries, even after implementing the increases proposed, will be lower than their levels for 2008, due to attrition. The IAFF maintains that neither the appropriations cap nor the levy cap are material to the case at hand because the lower base salary costs due to staffing changes preclude the necessity of any budget increase in the salary line item over that set forth in 2008. With respect to what it refers to as the "hard cap", the Union asserts that since the contract commences before January 1, 2011, the statutory "hard cap" is inapplicable. The IAFF claims that the Arbitrator "is free to 'do equity' based upon the proofs submitted by both parties."

The IAFF computes the current total base salary cost for the unit (using the current 2008 rates in effect) as \$4,054,324 for 42 employees. It reiterates that this is a reduced staffing reflecting the elimination of 23 filled positions in the unit, 21 at the Fire Captain level and 2 at the Battalion Chief level. Including the reduced salary and longevity benefits, the Union contends that the cost reduction to

the City for these 23 fewer positions filled is \$2,450,811.

The Union points out that the City experienced a positive result of operations for 2011 [as measured in the Annual Financial Statement, Exhibit U-27]. It showed that revenues were received in excess of anticipation [same source] by \$510,794. Additionally, the IAFF claims that the history of an unexpended balance of appropriation reserves provides the ability to regenerate fund balances, appropriated then to reduce the tax levy.

In examining the tax rate information in the 2011 Audit [Exhibit U-25], the Union expresses the belief that the previously flat tax rates had been reduced dramatically in 2011 at both the municipal and the total measurements. It acknowledges that tax collection rates have declined and are below the State average.

The Union argues that the cost of living criterion supports its position. It claims that the relevant

increase in "all items" consumer prices (3.4%) is greater than the 3% raises sought.

The IAFF concludes that the Employer has "basically resubmitted the case that failed before Arbitrator Pierson." It stresses that the City "has saved for its Police and Fire Pension contribution in 2012 the combined sum of Four Million Seven Hundred Eleven Thousand Eight Hundred Forty-Three Dollars (\$4,711,843.00)" citing Exhibit U-33. It further emphasizes the fact that the City has "reaped a windfall", based on the mandatory statutory contributions to health insurance premiums. It also draws particular attention to the cost reductions as a result of attrition to the bargaining unit, which it insists continues to provide "top quality fire services." The Union expresses disappointment that the efforts to gain parallel treatment with the Police Supervisors or the rank and file Fire Fighters were rebuffed. It seeks a ruling supporting its position through December 31, 2014.

Position of the Employer

The City contends that its final offer should be awarded as the only reasonable position for the resolution of issues in dispute in interest arbitration. It claims that the diminished levels of State aid prevent it from being able to afford any salary increases since it "cannot raise any meaningful revenue on its own." The Employer insists that it "simply cannot afford" the interest arbitration award rendered with respect to the rank and file Fire Fighters.

The Employer asserts that its position is based on three elements in the record: (1) its "dire financial status"; (2) the fact that this bargaining unit, even without further increases, is "among the highest paid bargaining units in the region"; and (3) the relevant statutory factors under the interest arbitration act.

The Employer points out that the City is a "distressed municipality with dwindling commercial and retail development and a population of 77,344

residents. It compares itself to Detroit, Michigan and Gary, Indiana. The City notes that it has the lowest per capita income of any municipality in the State [Exhibit C-42] and an extremely high unemployment rate of 19.1% [Exhibit C-42]. It states that it is subject to State oversight with a right for the State, through the Division of Community Affairs ("DCA"), to veto any official action by the City Council.

The Employer suggests that the implementation of the Union's proposal would cause it to layoff fire fighters. The effect of this action would be doubly difficult since it rehired those fire fighters with SAFER grant funds which require losses in funding if further layoffs occur. The City further maintains that the application of the IAFF proposal herein to the Police Superiors bargaining unit would have astronomical costs that are unaffordable and would trigger more layoffs.

The City asserts that its revenues have declined from 2010 through 2012 from \$184 million to \$167 million. It believes that the 2013 revenue figures

will reflect total revenues of \$167 million, based on State aid of \$113.7 million. It calculates the portion of revenue from its tax base as 14.5%.

The Employer anticipates further problems stemming from State aid revenues with the expected "phasing out" of financial assistance to municipalities in 2014. This revenue source, it explains, will be replaced by a "transitional aid" system which the City believes will distribute funds from a declining pool of funds. The Employer also cautions that a significant portion of revenue is provided from payments in lieu of taxes, which it claims "are paid at the discretion of the State" making them less reliable than in years past.

The City contends that the interest arbitration award covering the rank and file Fire Fighters cannot be funded by the Employer. It actually relies upon the findings of Arbitrator Pierson, noting the following quote:

To alleviate any misunderstanding or confusion, this Arbitrator [Arbitrator Pierson] does not contend that these increases fir within the City's ability to pay from its present tax base nor could be funded by greater bargaining unit concessions.



Indeed, the City alone does not have sufficient funds to meet the modest, but reasonable, increases granted. [Exhibit U-20, at p. 58]

The City stresses that the arbitrator does not have the power or the authority to order the State, not a party to the proceeding, to fund an award through increased State aid. The Employer points out that, "as a result of the award's unaffordable wage increases", the rank and file Fire Fighter award has been appealed to the Appellate Division of the Superior Court of New Jersey. The appeal is still pending. The City claims that the costs of that award will prohibit it from maintaining current staffing levels and services. It insists that the application of that award to the bargaining unit herein would create an expense that the City would not be able to pay. The Employer calculates the total cost of application of the rank and file award to this supervisory unit as \$1,108,000. That includes wage increases, retroactive wage increases, and longevity increases.

The City argues that its "declining revenue, its weak tax base, and the impact of the Local 788 Award

make it simply impossible for the City to afford any wage increases to the Superiors."

The Employer suggests that its offer with no wage increase "strikes a necessary balance between its dire economic realities and maintaining the Superiors' status as one of the highest paid units in the region." The Employer assails the Union's proposal for six years of increases at 3% across-the-board; it calculates the cost of this position as 19.4% of salary over the six years.

The City claims that implementing the Union's proposal would cause the further layoff of Fire Fighters. This would have a detrimental impact on the public interest as resources for the Fire Department are already limited. It characterizes further layoffs as presenting a "major public safety concern."

The Employer points out that the return of the City to home rule, with State DCA oversight, is accompanied by a 3% cap on local tax increases. This limitation would allow the City to increase its tax

driven revenues by only \$700,000 in fiscal year 2013 [Exhibit C-42]. This limit on the lawful authority of the Employer is compounded by the restrictions of the SAFER grants which allowed for the rehiring of laid off fire fighters. These grant funds come with limitations that would have severe consequences if layoffs were revisited. The "domino effect", according to the City, of implementing the IAFF's proposal would be to set in motion a sequence of events that would jeopardize the SAFER grants by forcing renewed layoffs.

The City expresses concern over increased pension costs over time. It considers the amount of increase over levels paid in fiscal year 2009 when there was a "pension holiday" of 50%; the increased levels are a result of the need to now pay the \$6.3 million liability (albeit amortized) that was deferred in the 2009 fiscal year. It insists that the effects of Chapter 78 has not had sufficient impact with respect to pension costs, leaving the fiscal year 2013 figures at 127% of that for FY2005.

With respect to the financial impact of the proposals, the City suggests that the implementation of the Union's position "would cripple the City." It expresses the fact that the cost of wages and benefits comprises two-thirds of all spending by the City [Exhibit C-42]. The City asserts that the application of an increase for this bargaining unit would have implications beyond its boundaries, affecting the police units, causing a much greater financial impact than the unit-wide amounts might suggest. The Employer states that the implementation of its own proposal would save the City approximately \$1 million in FY2013 and FY2014, preventing more layoffs and service cuts.

The Employer claims that the cost of living is a factor supporting its own position in this dispute. It maintains that the Fire Captains have had wage increases over the last contract that have outpaced the cost of living increases, measured on either a national or regional basis. It argues that the current rates of pay will leave the IAFF Superiors salaries "well-ahead of anticipated changes in the Consumer Price Index." [Exhibit C-42]

The Employer maintains that the members of the IAFF bargaining unit receive a highly competitive package as a measure of overall compensation. It draws attention to high salary rates, good longevity benefits, clothing allowance, access to an annual educational bonus, and eligibility to overtime compensation. It stresses that this "generous compensation" is accompanied by very competitive health benefits, including several choices of plans with family coverage. It also notes that the co-pays for prescription benefits are quite good when measured in the general labor market. The defined benefit pension plan and the availability of post-retirement health insurance are also factors in the overall compensation package.

The realm of comparison used by the City for analysis under the statutory criterion, includes the "designated metropolitan area" as defined by the Federal Government. It suggests that the valid comparisons are with Philadelphia, Reading, Chester, Wilmington and Vineland. The Employer describes the

IAFF unit as "one of the highest paid groups" even with no further wage increases and the elimination of longevity pay. It insists that this comparison warrants an award supporting the City's final offer.

In conclusion, the City argues that it has demonstrated: (1) a dire financial status; (2) highly competitive salary rates, even without an increase in compensation; and (3) support under each of the applicable statutory criteria. It seeks a determination adopting the Employer's proposal in its entirety in order to "preserve its fragile workforce ranks and levels of basic services."

### **Discussion and Analysis**

Interest arbitration requires that the issues be examined in light of the particular factual record established at hearing; they must then be analyzed in conjunction with the nine statutory criteria to determine the most reasonable resolution of the items in dispute at impasse. This process often requires balancing competing elements. There may be two or more aspects to any given factor which point in different directions and demand a choice among: moderation, accommodation, alteration, or simply a decision as to which is most compelling under the record.

In the present dispute, the employees perform an increasingly difficult critical function for a community which is under substantial financial strain. The fire protection responsibilities performed are very important for the residents of the City, the businesses that operate in the City, the employees of those businesses, and for the large number of people who travel through the City on any given day. The

testimony on the record established that there are remarkable difficulties present with respect to fighting fires in the City of Camden. This is especially true in light of the Department's limited resources. This provides a context for the discussion of the initial statutory criterion.

The **Interest and Welfare of the Public** is always a relevant criterion in resolving an interest arbitration dispute. There are numerous elements to the public interest factor but the Arbitrator believes that this initial criterion is always worthy of substantial weight in determining the most reasonable resolution of the parties' dispute. Consider that the services rendered by the employees at issue are a critically important aspect of providing for the public safety in Camden.

Battalion Chief Frank Sandrock testified with particular credibility about the nature of fire fighting in the City and, in a most compelling manner, about the Department's dedication and commitment to the residents of the City. He explained that there are



many, many "abandoned" structures which are dangerous venues for fighting fires. However, in reality, these structures which appear to be abandoned are not, due to their inhabitancy by an extensive number of homeless residents in the City. This places great responsibility upon fire fighting personnel, in order to provide safety to those unexpectedly present in a burning structure. He stated that every building must be treated as if occupied. The process is made more difficult by the number of row houses made of wood with connecting attic spaces that allow fires to spread dangerously with enormous speed. Battalion Chief Sandrock could not have been more convincing of the incredible dedication of the fire fighting force to its responsibilities to the public in the City of Camden.

The testimony also delineated the broad level of responsibilities falling upon the Fire Department. These include: responses to the Ben Franklin Bridge; to the high speed rail line; on Interstate 676; as a regional urban search team; and to hazmat emergencies. The Battalion Chief also noted Homeland Security consideration to their duties and that the City was the

home to a Rutgers campus, the Camden County governmental seat, a Federal Courthouse, and the venue for many events along the waterfront. He concluded that the workforce had a high esprit-des-corps.

Fiscal responsibility is another component of the public interest that is directly relevant to the considerations in this interest arbitration. The statute requires consideration of the public interest elements of the CAP. Additionally, the morale of employees and the impact of this contract in the context of the overall labor relations process in the City of Camden are important considerations in relation to the public interest.

The City is unique in the degree to which it must rely upon revenue sources other than its own tax base. The City's Finance Director, Glynn Jones, testified that, in 2010, the City produced only \$20.6 million of its \$170 million budget through local property taxes. He further testified that 52% of the properties in the City were tax exempt (governmental and non-profit properties), noting that the City received about \$10

million in payments in lieu of taxes. The City's tax collection rate, 89% in 2010 and 87% in 2011, is not strong and appears to be diminishing. This leaves the City dependent upon aid; the Finance Director testified that State aid has been decreasing: from \$125 million in each of 2009 and 2010; to \$114 million in 2011; to \$107 million in 2012.

The testimony establishes that the City was limited by a 3% levy cap in 2011, higher than that for all other municipalities, restricted to 2%. This produced an increase of \$700,000 in the 2011 levy; the Finance Director stated that the 2012 levy would be increased by 4% as a result of the waiver extension. It should be noted that the consideration of the impact of the cap restrictions as part of the public interest criterion is mandated by statute.

The impact of the Award herein upon other employee groups at the City is also a clear element of the public interest criterion. The Union stresses the importance of expectations in relation to the rank and file Fire Fighters that this unit supervises. It also

notes the impact on morale of the fact that the Employer voluntarily agreed to provide the Police Officers and Police Supervisors with a salary rate increase of 3.75% in 2009, the initial year of this contract, while offering zero to the Fire Officers. The relationship between the terms and conditions of employment awarded herein and those provided to other City employee groups, especially those in public safety, is a meaningful element of the public interest criterion.

It must be noted that the structure of the existing and past rank differentials, within the Fire Department, is a significant feature of an appropriate policy. Unwarranted changes in reasonable rank structures can undermine the ability to retain highly-trained and experienced employees. Providing no salary adjustments for the Fire Officers after having previously implemented and paying out an award increasing rank and file Fire Fighter salaries would cause a significant erosion of the historical rank differential structure in the Department. It is worth noting that this supervisory unit has already seen a

very dramatic loss of personnel through attrition. The Union's assertion of a "brain drain" is a matter of some concern.

The ability to attract *and retain* highly qualified employees in the Fire Department is a very important component of the public interest. This factor is essential to providing the public with fire fighting services. Similarly, the ability to maintain a sufficient staffing level to protect the City in the face of the threat of fire, is equally important. The public interest demands a compensation package that attracts and retains highly qualified employees but not one that prevents the City from sufficiently staffing the force.

The Award herein balances the considerations; the result seeks to maintain integrity to the historical rank differential structure while it moderates the financial impact to a measure that the this Arbitrator believes is within the City's ability to maintain current staffing levels in the Fire Department.

The balancing methodology is not simplistic but it is quite effective. First of all, the Arbitrator does not provide any back pay prior to January 1, 2011. This means that the payout cost to the City of this award in the first two years of the contract is the equivalent of a zero increase in salary. Note that this is a delay in the impact of the salary increases not a pure salary freeze, however the cost savings to the City are quite substantial [see calculations under the financial impact criterion discussion].

Further, rather than maintain a percentage rank differential structure, the Award herein provides for the unit employees to receive the same dollar value increases that raised the Fire Fighter salaries, measured at the top step Fire Fighter rank. This causes some compression in the percentage nature of the rank differentials but keeps the dollar differentials constant over the life of the agreement. The Fire Officers will receive a reduced percentage raise from that of the employees they supervise, however, the dollar value of the raises will be equal to the top Fire Fighter rank, at all the ranks in this bargaining

unit. This will effectively temper the costs of the salary increases without assaulting the integrity of the rank differential structure.

Finally, the balancing of the package includes the application of an additional year (2013) beyond the Fire Fighter contract duration. That year will provide no wage increase, giving the Employer another zero cost year in the package. It is important to note that the package has an additional natural balancing effect; there are no salary step or incremental increases in the contract at issue herein. This package costs the Employer substantially less than would occur with the rote application of the percentages and duration of the Fire Fighters award. It is designed to allow the Employer to maintain current staffing levels in the Department.

The **Comparability** criterion requires an examination of numerous factors for comparing the employees of the unit at hand to other employees. It expressly dictates an examination of wages, salaries and terms and conditions of employees in the: private

sector, generally; the public sector, generally; and the public sector in the same or similar jurisdictions. It also indicates that the employees should be compared to those performing the same or similar services and to other employees, generally. It is up to the Arbitrator to determine the due weight to be attributed to each of the comparisons.

The most commonly used data with respect to comparisons with employees in the private sector, generally, is the Private Sector Average Annual Wages table compiled by the New Jersey Department of Labor and Workforce Development and republished by the New Jersey Public Employment Relations Commission. The latest such data was issued in September of 2012, indicating that, statewide, the 2011 average annual wage for private sector employees (it relates to all those covered by unemployment insurance) was 2.1% above that for 2010. When broken down by County, the data reveals that Camden County private sector average annual wages increased by 1.1% from 2010 to 2011. Similarly, the data from the August 2011 report revealed that the average annual wage for private



sector employees increased by 2.2% statewide and by 1.4% in Camden County from 2009 to 2010. Note the consistency between the two reports.

It is important to recognize that the only private sector comparisons are general, rather than specific. That is because there are no employees in the private sector performing the same or similar functions as the Fire Supervisors represented by the IAFF, herein. The private sector data has some value as a context for the economic circumstances present in the State and the County. However, it is general in nature and must be viewed along with other, more specific data under this criterion. This evidence of private sector wages has been given some weight in the formation of the economic package awarded herein; while the private sector data is quite consistent with the result, the package awarded was not necessarily driven by that data.

Comparisons involving the public sector, generally, are of similar import to those of the private sector. The same report noted above, the annual wage survey from the New Jersey Department of

Labor and Workforce Development published through the Public Employment Relations Commission presents credible data as to government sector employees, generally. With respect to the changes from 2009 to 2010 the report reflects a 2.2% average overall general wage increase in government employment. The same figure for 2011 over 2010 is 2.1%. The average wage increase reported for local government employment is 2.7% in 2010 over 2009 and 1.4% in 2011 over 2010. Once again this evidence is reasonably consistent with the package awarded herein but it is not worthy of more than limited weight.

The Arbitrator finds that comparisons with employees performing the same or similar duties provides the most meaningful comparisons. This is especially true when comparing similar jurisdictions or within the same jurisdiction, as the units at issue. Further, comparisons with other employee units of the same employer are particularly informative and significant under the Comparability criterion.

On August 15, 2011, an interest arbitration award was issued addressing the impasse between the City and IAFF Local 788 [Exhibit U-20] representing the rank and file Fire Fighters. That award, as previously noted, was affirmed by PERC on appeal and a further appeal to the Appellate Division is still pending.

The salary increases provided in the Fire Fighters award have been paid; implementation was not stayed. That award provides the most relevant comparison under this particular statutory criterion. It warrants the most weight because it is for employees in the same department as those involved in the impasse at hand. Indeed, the employees in the Local 788 arbitration award are supervised by the employees in the bargaining unit at issue. The Local 788 award's relevancy is enhanced by the fact that it is the most recent evidence within the City for a public safety comparison. Note that the record in that proceeding included the same backdrop of financial stress on the Employer. There is direct and clear testimony acknowledging that the Employer's presentation was very similar in the two proceedings.

The salary increases provided in the Local 788 award were as follows: January 1, 2009 - 2.5%; January 1, 2010 - 2.0%; January 1, 2011 - 2.0%; and January 1, 2012 - 2.0%. The award further provided that the retroactive wage payments were to be made only to January 1, 2011. The duration of the contract was set at four years, to run from January 1, 2009 through December 31, 2012. The Local 788 award also addressed the issues of: Pay Periods; Vacations; Sick Leave; and Insurance, Health and Welfare.

Of substantial significance is the fact that, if the Employer's proposal for a five year wage freeze were accepted, the award set forth in Exhibit U-20 would cause the differential between the top step salary of Fire Fighter and that of Captain (in this unit) to close by nearly \$6,700, as of the issuance of this Award. The package awarded herein takes a modified approach to maintain the integrity of the historical rank differentials by dollar values rather than by percentages. Of course the waiver of any retroactive payments for 2009 and 2010, consistent with

the Local 788 award, will provide the City with two years without any payout costs. The addition of another year, 2013, at a zero increase, provides the Employer with the duration that it seeks and another year without increased costs over those of 2012. Note that there are no incremental steps, nor incremental costs, related to the salary guides in this supervisory level contract.

Exhibit U-22 reveals that the Local 788 award produced percentage increases for the rank and file Fire Fighter, at maximum base pay, of 2.5%, 2.0%, 2.0% and 2.0% for the years 2009 through 2012, respectively. The dollar value increases for the maximum Fire Fighter salary (\$76,162 in 2008) can be calculated as follows:

2009 - \$1,904

2010 - 1,562

2011 - 1,592

2012 - 1,625

Using the same dollar value increases produces a lower percentage cost for the Supervisors unit since the dollars would reflect increases on a larger base salary. For example, the dollar values above would

represent lower percentage increases on the Senior Captains rate (the most populated title in the unit with more than half the unit's employees, 25 of 42). This reduces the effective percentage increase for that modal salary rate to 1.99% for 2009 and, due to the elimination of retroactive pay before January 1, 2011, the cost of this increase will not be realized until 2011, a meaningful reduction in cost to the Employer. The effective salary rate increases upon the Senior Captains' rate for the remaining years are: 1.61% in 2010; 1.61% in 2011; 1.62% in 2012; and zero in 2013. Similar to the 2009 rate increase, the 2010 increase shall not have any cost impact to the Employer until 2011.

The unit-wide percentage rate increases [see calculations under the financial impact criterion] for all 42 employees would be as follows: 1.97% for 2009; 1.59% for 2010; 1.59% for 2011; 1.60% for 2012; and zero for 2013. The annual average increase, using the cumulative 6.75% over the five year duration is 1.35%.

The cost reduction to the City through the elimination of retroactive pay for 2009 and 2010, considering only the salary impact without consideration of overtime and other salary generated costs, is \$225,540. This accounts for 42 bargaining unit members foregoing the retroactive effective of the \$1,904 raise that would have been effective January 1, 2009 for two years, and the \$1,562 retroactive raise that would have been effective January 1, 2010, for one year. This \$225,540 cost reduction is a meaningful modification to reflect the financial stress upon the City. The increases provided in this Award have zero payout cost to the City in the first two years of the contract 2009 and 2010.

Further, the use of the modification converting the Local 788 award to flat dollar values, rather than using percentage increases, saves an additional \$75,078 on base salary increases as of January 1, 2012. This represents a reduced cost amount equal to 1.85% of the original 2008 unit base of \$4,054,324.

The salary rate increases awarded herein are equal, in dollar value, to those of the rank and file Department members. They are, in that way, consistent with the comparability criterion. The Arbitrator acknowledges that the more standard application of the comparison would have resulted in equal percentage increases rather than dollar value increases. However, this is not a case for the "standard" application of this criterion. The criterion must still be given weight but that weight is moderated by the public interest and financial impact criteria, which demand some adjustments with respect to costs. The use of flat dollar increases and the addition of another year with a zero increase establish a reasonably balanced reflection of the evidence presented.

This internal comparison with the rank and file Fire Fighters is the most meaningful *comparison* available as evidence in this interest arbitration. As such it is given significant weight as a decision making factor but clearly *not all the weight*. There are other meaningful comparisons to consider. The fact that the Police rank and file and supervisory units



were voluntarily provided a salary increase equal to 3.75% for 2009 is worth some attention, although there has been a change for the worse in the economic climate since that resolution was agreed upon. The different context for bargaining since the police settlements must serve to diminish its full impact but there must be room to attribute some weight to those 2009 increases of 3.75%.

The City proposes comparisons with Fire Officers contracts in what it describes as the regional metropolitan area urban municipalities. This comparison group includes: Philadelphia, Pennsylvania; Reading, Pennsylvania; Chester, Pennsylvania; Wilmington, Delaware; and Vineland, New Jersey. The Arbitrator has carefully considered these comparisons and they have been given some meaningful weight in deciding this case. The primary source evidence for these comparisons is all set forth in the CD received as backup data for Exhibit C-42.

The Employer is quite correct that the compensation levels in Camden are superior to all of

the out-of-state comparisons in Pennsylvania and Delaware. The Camden pay rates are substantially better than these out-of-state communities. The Camden rates are also significantly lower than the rates of similar employees in Vineland, the only New Jersey community used in the Employer's comparison group.. In fact, the Camden rates appear to be approximately mid-way between the rates in Philadelphia and those in Vineland, using the Captain's title (Senior Captain in Camden) as the comparison.

It is also important to track the movement (during the contract term) of the salary rates in these comparison municipalities selected by the Employer. None of the communities selected by the Employer experienced a total freeze in salary rates over the years at issue in this interest arbitration.

For example, in Philadelphia the most recent interest arbitration award provides for a four-year contract with a duration from July 1, 2009 through June 30, 2013. There was no salary rate increase for July 1, 2009 but there were three separate 3.0% increases on

each of the ensuing July 1st dates. That represents a 9.0% cumulative (without adding compounding) increase over 4 years, averaging 2.25% per year, somewhat backloaded in payout costs. It is worth noting that there is a January 1, 2009 salary increase in place from the prior interest arbitration award in Philadelphia. Salary rates were increased by 2.0% on January 1, 2009.

In Wilmington, Delaware, the salary rates of Fire Officers increased by 2.25% (effective July 1, 2008) for the contract year covering the last half of 2008 and the first half of 2009, which overlaps with the duration of the contract in dispute in this impasse. They increased by an additional 2.25% on July 1, 2009 covering the contract year through June 30, 2010. It is true that the rates did not increase for the contract years from July 1, 2010 to June 30, 2012, two years of zero increase. For the four year period that essentially overlaps the duration at issue herein, the Wilmington Fire Officer rates increased by 4.5% cumulatively (without compounding), an annual average of 1.125%. The most recent 5 year contract period in

Wilmington provided a 6.5% increase, with an annual average 1.3%.

In Reading, Pennsylvania, the Fire Officers received increases of 3.5% on January 1, 2009 and 3.25% on January 1, 2010. These two increases were followed by zero increases for the next three years, 2011, 2012, and 2013. The five-year cumulative (not compounded) total wage increase was 6.75%, an annual average increase of 1.35%. It is significant to point out that the current contract extends out through 2015, providing 2.0% increases in 2014 and 2015.

In Chester, Pennsylvania, the Fire Officers are subject to an interest arbitration award providing salary rate increases in the overlap years of: 3.0% in 2009; 3.0% in 2010; 3.0% in 2011; 3.5% in 2012; and 3.5% in 2013. That award also establishes increases of 3.0% to 4.5% in the 2 years preceding the overlap period and the three years beyond that span. The 16.0% cumulative increase during the overlapping years averages 3.2% annually.

The Vineland Fire Officers contract sets forth salary rates that increase as follows over a four year duration: 3.0% in 2010; 1.5% in 2011; 1.5% in 2012; and zero in 2013. It is especially relevant to note that the contract in Vineland does not provide any retroactivity in 2010. The cumulative (without compounding) total salary rate increase is 6.0% over the four-year duration. The annual average increase equals 1.5%. The absence of retroactivity prior to January 1, 2011 is worthy of added emphasis in this discussion.

The Arbitrator finds the Employer's comparison group to be worthy of consideration and weight in the analysis of the evidence. The City makes a valid point that the compensation plan for unit members is strong among the comparison group. Note that it is not the best in the group but it is substantially better than the out-of-state comparisons. With the exception of Reading, the out-of-state comparisons are within a geographic proximity to warrant meaningful probative value.

The comparisons are, for the Employer, something of a double-edged sword. Although they support the claim of a strong competitive position, they also delineate that none of the comparison group experienced the type of long-term wage freeze proposed by the City. Indeed, the average annual salary rate increases in each case are more supportive of the package awarded herein than of the five-year period of a wage freeze proposed by the Employer. The Employer's comparison with Philadelphia, Reading, Chester, Wilmington, and Vineland has had a significant impact upon the formation of the wage increase package awarded herein.

The Union used a comparison group made up of various regionally (New Jersey) proximate local police, local fire and county police bargaining units. It also submitted evidence relating to the fire contracts in Kearny, Belleville and Trenton. The Arbitrator has given consideration to all of this comparative evidence. Of greatest value in this group of comparisons is evidence of wages and other terms and conditions of employment in nearby Cherry Hill and in Trenton. The Cherry Hill contracts [Exhibit U-18 and

U-19] provide evidence relating to a fairly large, full-service municipal government in immediate geographic proximity to the City of Camden. The Trenton comparison [evidenced in Exhibit U-17, Tab #18] is most relevant because it is the closest of the "Big Six" cities to Camden. It has a large Fire Department in an urban setting and is also a municipality facing serious financial stress.

The Cherry Hill Fire Officers contract [Exhibit U-18] has a three-year duration, from January 2009 through December 31, 2011. It provides for the following across-the-board salary rate increases: 3.0% on January 1, 2009; 3.5% on January 1, 2010; and 4.0% on January 1, 2011. These are the same package of salary rate increases provided to the rank and file Fire Fighters in Cherry Hill for the same period of time [Exhibit U-19]. The base salary rates in Cherry Hill are reasonably similar to those of the City, at the Fire Fighter and Fire Officer levels. They will increase at a greater pace for the duration of this contract than those in the City.

The Trenton Fire Officers received a voluntary settlement [see Exhibit U-17, Tab #18] providing, for the overlapping years, increases of: 3.5% January 1, 2009; 3.0% January 1, 2010; 3.5% January 1, 2011; and 3.5% January 1, 2012. The interest arbitration award setting the terms and conditions of employment for the rank and file Fire Fighters in Trenton applied these same percentages over the same duration. The Trenton comparison is relevant but must be discounted by a meaningful degree based on timing. The salary increases noted above were established in 2009 and are founded in an earlier time-frame when the current level of economic stress had not yet been fully realized by municipalities.

It is easy to see that there are an extraordinary number of elements to the comparability criterion. There is evidence supporting each party's position. These factors have been thoughtfully weighed and applied. They have also been considered in the context of other statutory criteria, most particularly the public interest and financial impact subsections, and the compensation package awarded herein is reflective



of the evidence. It is important to explain that the Arbitrator might have awarded greater salary rate increases had the comparability criterion been the only one in the statute. However, that is not the case and comparison evidence has been balanced to reflect the other criteria to produce salary increases in keeping with the entire set of statutory standards.

Examination of the evidence in relation to the **Overall Compensation** criterion reveals that the bargaining unit members receive a reasonably competitive overall compensation package. The 2008 salary rates compare fairly with other regional jurisdictions for that contract year. Although they may be somewhat lower than many New Jersey Fire Departments, the 2008 rates are not so low as to provide concern about recruitment and retention.

However, the application of five years of a wage freeze, as proposed by the Employer, would cause that reasonably competitive position to erode. Similarly, the compression of the rank differential would serve to undermine the established structure of the compensation

plan, should the City's five year wage freeze be implemented.

The Arbitrator further finds that the six year sequence of 3.0% annual wage increases proposed by the Union is not warranted under the overall compensation criterion. The compensation package does not demand increases of that margin, over that period of time, to remain competitive and in keeping with the historical relationships within the rank structure.

The contract includes various benefits at reasonably competitive levels for bargaining unit employees. The Arbitrator has reviewed the record, particularly the components of Exhibit J-1, the collective bargaining agreement, and found that the vacation, sick leave, injury on duty leave, funeral leave, health insurance, longevity pay and statutory pension benefits are competitive and consistent with the "industry" standards, that is, other New Jersey Fire Departments.

It is significant to note that two aspects of the overall compensation package have been substantially affected by legislation. *Chapter 78, P.L. 2011* [Exhibit C-47] established a phased in plan for employee contributions to health insurance premiums that will establish rates of employee contributions up to 35% of premium costs by the end of the phase in period. By virtue of their salary levels, this maximum rate will, as phased in, effect all unit members. Note, that as *Chapter 78* is phased in, it operates in conjunction with *Chapter 2, P.L. 2010* which established an employee contribution equal to 1.5% of salary (as opposed to premium costs) for health insurance premiums, and continues to provide a minimum level of contributions. Further, *Chapter 78* affects the bargaining unit members pension contribution rates. These employee contributions rise from 8.5% to 10.0% under the legislation enacted in 2011.

The point of raising the statutory changes in health insurance and pension benefits is to emphasize that during this contract period, those benefits have been reduced as a matter of law. The Arbitrator finds

that the policy behind these changes is not at issue in this interest arbitration; its impact is merely a fact in the record at hand and must be given due weight under the overall compensation criterion.

The statutory modifications of the employees' health and pension benefits is, in fact, a standard effect upon fire department employees throughout the State, since it was implemented across-the-board. The consistency of this impact is noted, as it moderates the value of the overall benefits package received by unit members. The overall compensation package of unit employees remains reasonably competitive, as modified in this award, irrespective of the statutory changes.

The only substantive stipulation the parties have entered into is the fact that the rank and file Fire Fighters (Local 788) interest arbitration award, after having been sustained by PERC, is still subject to a pending appeal before the Appellate Division. The Arbitrator recognizes this stipulated fact under the **Stipulations of the Parties** criterion. It is given appropriate weight; particularly in conjunction with

evidence that the salary increases in the award have been fully paid by the Employer.

The **Lawful Authority** and **Statutory Restrictions** criteria require consideration of the CAP Law as it relates to the issues in dispute. In the case at hand, the provisions of the levy cap are relevant and its impact must be weighed. The 2.0% cap on interest arbitration awards is not applicable to the impasse at hand because the expiration of the prior contract was December 31, 2008. The filing date of the original petition for compulsory arbitration pre-dated the effective date of the statutory and rule changes.

According to the testimony of the City's Finance Director, it was subject to a levy cap of 3.0% for FY 2011 and to 4.0% for FY 2012. The witness explained that the City received approval from the New Jersey Department of Community Affairs for a levy cap waiver increasing the levy in 2011 by 9.8%, an increase in the levy of approximately \$2 million. The 4.0% cap figure, he noted, generated only about \$700,000 in increased local tax revenues for 2012. This witness further

explained that the portion of overall revenue generated by local property tax receipts was below 15% of the budget annually.

For several reasons, it is obvious that the impact of the levy cap is not problematic with respect to the economic terms awarded herein. First of all, the cap is considerably greater than the net value of the terms set forth in resolving this impasse. The average annual salary increase awarded is well under 1.5% per year, due to the use of flat dollars, rather than strict percentage increases. Further, the payout cost of the salary increases awarded is dramatically reduced by limiting the retroactive application to January 1, 2011. This provides two years, 2009 and 2010, without any increased cost implications in those years. Additionally, the provision for a zero increase in calendar year 2013 creates a third year of no increased costs over the previous year.

The City's emphasis on the fact that such a small portion of revenue comes from local property taxes actually serves to underscore the lesser impact of the

levy cap on the finances herein. While issues of outside sources of revenue (e.g. State and Federal funds) may present more difficult issues, the levy cap (at 3% or 4%) does not account for the City's budgetary stress. Finally, the relatively small amount of unit-wide cost of this bargaining unit, as a function of the overall appropriations of the City, makes it absolutely clear that the levy cap does not establish any conflict with the cost elements of this award. The levy cap is most surely not problematic with respect to the terms awarded. It should also be noted that the attrition experienced in bargaining unit personnel, over the time frame, makes the year to year cost calculations well within any limitations.

As noted above, the Award set forth herein is not subject to the 2.0% "hard cap" applicable to certain interest arbitration awards, depending upon the dates of duration. However, it is significant to emphasize that the economic terms of this resolution of impasse, falls well within the 2.0% hard cap restrictions, even though it is not lawfully required to do so. First of all, it must be stressed that there are no incremental

costs in this bargaining unit because there are no automatic step increments under the contract at hand. Secondly, the average annual increases for unit members are well below 1.5%, even when the entire increase is computed as a percentage of the December 31, 2008 total base. The four flat dollar increases awarded total \$6,682 per employee. Multiplied by 42 unit members on the scattergram and then divided by the 2008 total base for those 42 employees (\$4,054,324) generates a 6.9% increase over five years. The annual average increase is 1.38%. This calculation is reasonably consistent with the more generally accepted costing methods which calculate the cumulative increase to be 6.75% over 5 years or 1.35% as an annual average increase.

The Union relies upon the lawful authority criterion with respect to its proposal to change the overtime language in the contract. It maintains that the current system may not be consistent with law. It stresses that the City has different provisions in its police supervisors contract, specifically referencing the Federal Fair Labor Standards Act. The Arbitrator finds it appropriate to reference applicable law with



respect to the overtime provisions, finding that this will emphasize to both parties that compliance with controlling statutes is required.

The Arbitrator finds that the economic package awarded herein is warranted under the Lawful Authority and Statutory Restrictions criteria. It is in keeping with those CAP Law provisions that do apply and it is also consistent with later restrictions, although they do not legally apply to the case at hand.

The Arbitrator has paid particularly close attention to the **Financial Impact** criterion; as noted earlier, the City faces significant fiscal stress, as it has for quite some time. The Award herein must balance the need to increase the costs of any economic package with the limitations that exist as to ability to provide for those costs in the budget.

The tax base for the City of Camden produces an extraordinarily low percentage of the revenue needed to fund its budgetary appropriations. According to the Finance Director, the tax levy in 2011 produced revenue

of \$22.6 million for a budget that appropriated \$170 million. He explained that in 2012, the levy raised an addition \$700,000 and the budget adopted for that year was about \$167 million. In each of the two years above, the percentage of revenue from the local levy is below 15%. This represents a serious structural problem with respect to the City's finances. It is dependent upon other, outside sources of revenue to be able to fund the public services it must provide for those who live, work or travel through the City. These sources include State and Federal funding and, also, payments in lieu of taxes.

According to the Finance Director, State aid to the City has been declining. He testified that the \$125 million received in 2009 and again in 2010 has been reduced to \$114 million in 2011 and \$107 million in 2012. Further testimony expressed the belief that there is a pattern of reduced State aid and a structural change to the processes by which the State provides various elements of aid that will reduce future funding. The cross-examination of this witness established that the future expectations of reduced

State aid were measured at about 4% as a state-wide figure and not necessarily specific to Camden. However, these trends were sufficiently established to lead this Arbitrator to find that the City will continue to face limitations with respect to State funding and that the stress of this issue is not going to disappear. As such, the economic package awarded herein is built to balance the financial impact of the contract accordingly.

The cost of the economic package awarded can be calculated on the base salary data computed from the staffing set forth in Exhibit U-9. Note that any variations in staffing that occur over time, and any differences in numbers used by the parties, are accounted for by computing the 2008 base salary figure on the fixed staffing levels used throughout the costing analysis. The staffing levels used by the Arbitrator include: 8 Fire Captains; 25 Senior Fire Captains; 8 Senior Battalion Chiefs; and 1 Fire Official [Exhibit U-9]. Based on the 2008 salary rates of: \$91,776 for Fire Captain; \$95,355 for Senior Fire Captain; \$103,676 for Senior Battalion Chief; and

\$106,833 for Fire Official/Subcode Official. These are the only titles that the record establishes to be populated. The 2008 base pay figure for the unit equals \$4,054,324 for this compliment of 42 employees.

The across-the-board flat dollar rate increase of \$1,904 for 2009 generates a unit-wide cost of \$79,968 but that cost will not be realized in either 2009 nor 2010 due to the elimination of retroactive pay prior to January 1, 2011. The figure of \$79,968 represents an increase of 1.97% of the 2008 total base salary for the unit. The rate increase for 2010 equals a flat dollar amount of \$1,562 across-the-board and a unit-wide base salary increase of rates equalling \$65,562. This cost, again due to the elimination of retroactive pay prior to January 1, 2011, will not impact the City during 2010. It represents an increase of 1.59%, computed on the new 2009 base of \$4,134,292. Similarly, the 2011 increase of \$1,592 (flat dollars across-the-board) generates a base salary cost increase of \$66,906 or 1.59% of the new 2010 total unit base salary of \$4,199,854. Finally, the 2012 increase of \$1,625 (flat dollars across-the-board) generates a base salary cost

increase of \$68,208 or 1.60% of the new 2011 total unit base salary of \$4,266,760.

Of course the 2013 contract year provides zero salary increase for that year. This year of a wage freeze for the bargaining unit provides a recognition of the need to balance the impact of the otherwise warranted pay components with the difficulties presented by the financial realities faced by the Employer. Three years of this five year contract have no payout cost to the City above the prior year's costs, as a result of this award. The package is properly balanced to maintain the rank compensation structure and to provide a reasonable pay increase within acceptable bounds of the financial impact on the municipality.

It is significant to reiterate that the cost reduction of eliminating the retroactive payments for 2009 and 2010 is \$79,968 for 2009 and \$145,530 for 2010. This is a total cost reduction of \$225,498 compared to the cost of this same package, had the retroactive payments before January 1, 2011 not been

eliminated. Similarly, had the same percentage increases as the rank and file (Local 788) award been applied in the case at hand [a result that might be expected under ordinary circumstances] the cost of the rate increases would have been higher in each year: \$21,390 for 2009; \$17,555 for 2010; \$17,870 for 2011; and \$18,263 for 2012. That reveals that this award, balancing the costs by using flat dollars across-the-board, reduced the increase in the total base pay by about \$75,000 compared to the application of the Fire Fighter percentage increases. Additionally, the added year's duration provides a zero increase for 2013 not established by the Local 788 award.

The City has strenuously argued that it cannot afford the financial impact of the Union's six-year proposal. Further it asserts that the application of the Local 788 award is also beyond its fiscal constraints. However, the Arbitrator finds that the financial impact of the package awarded herein is well within the reasonable expectations of the Employer's fiscal capacity; it has significantly less cost than the Union's proposal or the application of the Local

788 award. The Arbitrator has carefully weighed the costs herein in relation to the overall budget. For example, the \$68,208 base salary cost increase in 2012 represents less than 1/2 of one percent of the 2012 budget figure of \$167 million. Indeed, the rate increase in each year is well under one-tenth of one percent of the City's budget.

The Arbitrator has given consideration to the City's argument that there will be a ripple effect of this Award upon other City bargaining units, increasing its costs in ways not calculated herein. The Arbitrator acknowledges that there are comparative elements to the collective negotiations process that may lead to some ripple effect. The possibility that other bargaining units will cause the Employer's costs to rise in addition to those awarded herein is accepted and weighed in establishing the terms ordered in this impasse resolution. However, it is absolutely clear that these costs are not necessarily the same as those for other units and the impact on other units, even the police units, cannot be measured with any precision at all. Consider that the police units both received

3.75% salary increases in 2009. That did not cause either fire unit to receive 3.75% for that year. Consider that although the Local 788 award provided some meaningful weight for the determination herein, this dispute was not resolved on identical terms. Further consider that by including a zero increase for 2013, this award has assisted the City in its ability to predict and plan for its budget in that year with the probability that other units may be impacted by that freeze as well. The financial impact of this impasse resolution beyond this unit, including the implications upon other bargaining units, has been given due weight and used to craft a balanced result herein.

The record reveals that the operation of Chapter 78 P.L. 2011 will serve to substantially contain the costs to the City of both the health benefits and pension benefits for unit employees (and all other employees as well). Specifically, unit members will increase their contribution to the Police and Fire Pension Fund from 8.5% to 10.0%. The documentation and testimony establish that this increase in employee



pension contribution will serve to lower the City's responsibility. Indeed, Michael Nadol, the City's expert witness on public financial management acknowledged that the Employer's 2012 pension costs were lower than those of 2011.

Similarly, the health insurance components of Chapter 78 require a four-phase ratcheted increase in employee contributions for health benefit premiums, rising in its final phase to 35% of the premium. Mr. Nadol confirmed that these payments are made directly to the City to offset its own premium responsibilities. The Arbitrator understands fully that these cost containment results were exactly what the legislature intended when it created the statutory change. The Arbitrator has absolutely no intent to undo or to offset those cost containment features; they are serving the purpose enacted by law. The discussion of the cost containment in this analysis is merely limited to the recognition that there has been some substantial containment of costs which are relevant to any consideration of the Financial Impact criterion.

Mr. Nadol's testimony revealed that the City was in an exceptionally weak position which he compared with the cities of Detroit, Michigan and Gary, Indiana. He noted that the Employer is highly dependent upon State support and that the State aid is accompanied by conditions. The witness prepared a report, Exhibit C-42, which charts quite a few factors related to the economic condition of the City. The report notes that Camden has the lowest per capita income and median family income levels among the "Urban 15" New Jersey municipalities. Similarly, the median home value in the City is in last place. Unemployment and poverty are most problematic in Camden among these fifteen jurisdictions.

The Nadol report states that the fiscal problems faced by Camden have created "hardships for affected employees, reducing service levels, and further eroding Camden's quality of life." It also posits that the failure to contain expenses per employee would cause "further layoffs and even more severe service cuts." Mr. Nadol provides detailed information with respect to the revenue challenges faced by the City, very similar

to those presented by the City Finance Director. The extensive reliance on State aid and the extraordinary limitations of local property tax revenues are most prominent among a number of difficult factors faced by the Employer. The tax collection rates at a little below 90% annually add to the problems. The expenditure pressures are also addressed in the Nadol report, focusing, among other things, on the value and cost of the prior (2005 to 2008) contract for Fire Officers.

The City's Finance Director testified that if the "pattern" of the Local 788 award were to be applied to all three safety units that he could not say as to where the funds would come from. When directly asked if the funds were available, the witness answered, "I'm going to say no...I don't know where we're going to get the funding."

Under cross-examination, the City's financial management expert witness acknowledged that he prepared and presented at the rank and file Fire Fighter interest arbitration hearing a report very similar to

Exhibit C-42 in this proceeding. That report also stated the various fiscal concerns and issues faced by the City, with statistical backup to support those concerns.

The witness confirmed that he testified that there would be "dire consequences" if the Local 788 arbitrator awarded anything other than the City's own position in that dispute. The testimony in this proceeding also acknowledged that the Arbitrator in the Local 788 impasse issued an award that was confirmed by PERC and has been implemented by the City. The witness confirmed that full compliance with the award has been made, to the date of the testimony, June 6, 2012. *All payments have been made.* Further, the expert was asked if the numerous Fire Fighters that were on layoff status at the time the Local 788 award was issued had been rehired. The witness confirmed that all the Fire Fighters that had been laid off have been rehired as of the June 6, 2012 date of the third day of this hearing.

The Arbitrator finds that there is absolutely no evidence that the terms awarded herein will have any

impact on the tax rates of the municipality. The cost of this package is a relatively small portion of the municipal expenditures and more than 85% of that budget is funded from sources other than local property taxes. There is also no convincing evidence to establish that the terms of this Award will cause services to be curtailed. The fact remains that there are structural fiscal problems faced by the City of Camden. These problems are not new and will present ongoing challenges to the City's ability to provide services for its residents and those who work and travel through the City. However, maintaining the quality of the work force in the Fire Department is also a critical factor for the City. The package awarded herein is designed to produce a financial impact reasonably within the City's available resources without presenting a threat to maintaining services at reasonably acceptable levels. The Financial Impact criterion has been given substantial weight in the decision making process for this Award.

The **Cost of Living** criterion is worthy of some weight in determining the terms of the IAFF contract

but that weight must be tempered by the overall context of the data, which has become much more volatile in recent years. The City acknowledges that the regional Consumer Price Index (CPU-U) for the Philadelphia/Southern New Jersey area, measured by the U.S. Department of Labor, Bureau of Labor Statistics, [Exhibit C-42] has produced the following increases measured from December to December:

2009 - 3.0%

2010 - 1.4%

2011 - 2.7%

The Employer correctly argues, however, that when viewed over time, unit members have received wage increases outpacing the rate of inflation from the beginning of their prior contract through the years of the current data [Exhibit C-42]. The City also produces data of a survey of professional forecasters to suggest that the 2012 and 2013 increases in the cost of living (nationally) will be about 2.0% and 2.3%, respectively. The Union, focusing on national statistics maintains that the 2011 cost of living increase was 3.4% [Exhibit U-32].

The Arbitrator finds that the regional statistics are more persuasive than the national data. Some recognition is given to the Employer's longer term view of the cost of living, balancing the result herein. The terms awarded in this Decision are certainly consistent with and properly reflective of all the evidence relating to the cost of living criterion.

**The Continuity and Stability of Employment**

criterion is also reflected in the substance of the Award herein. The economic stress upon the City has seen some dramatic impact in the form of layoffs and other measures affecting the stability of employment. While the record has definitively established that all Fire Fighters who were laid off have been rehired, the record of instability cannot be ignored. The package herein has provided due weight to the past instability and the potential for future issues. Due to that potential, the cost of the economic package has been reduced, below levels dictated by other aspects of the record, to properly balance the result.

This eighth criterion specifically notes the applicability of other factors ordinarily and traditionally considered in the determination of the terms and conditions of employment. In the case at hand, the relationship between a supervisory group and the rank and file bargaining unit they supervise is historically one of the most compelling factors by which wage determinations are made. As noted previously, historic rank differential structures are very meaningful and must be given significant weight. However, the weight must be balanced as noted above.

One of the issues presented herein is that of the duration of the contract. The Employer has proposed a contract through December 31, 2013; the Union seeks an agreement with an expiration date of December 31, 2014. It is significant to note that the arbitration award for the Fire Fighters creates a contract which expires on December 31, 2012. The Arbitrator in this matter finds that the public interest criterion dictates a duration through December 31, 2013, as proposed by the City. The parties are in apparent agreement that to end the contract in just a matter of a few months,



December 31, 2012, would not be beneficial. The record supports the inclusion of calendar year 2013 within the contract duration. That provides a reasonable period of time between contract negotiations. It enables the Arbitrator to provide the City with the balancing impact of a zero wage increase in 2013. It will, by establishing predictability in 2013, enhance the stability and continuity of employment. The 2013 year is reflective of the evidence under the financial impact criterion as well. The duration of contract to be awarded herein is from January 1, 2009 through December 31, 2013.

The Union has proposed that the contractual overtime provision be changed to define all overtime as time and one-half compensation for work beyond the regularly scheduled work day. This proposal is urged as consistent with the overtime provision of the Police Superiors contract. The IAFF also advances an argument based on the operation of federal law, noting the Fair Labor Standards Act.

The Arbitrator does not find the proposed revision of the definition of overtime to be warranted at this time. The current contract (Exhibit U-1] is in direct parallel to the existing provisions of the rank and file Fire Fighters contract. The overtime issue was not addressed in the recent Local 788 award [Exhibit U-20]. That current two-unit relationship is most appropriate under the public interest and comparability criteria. It is also proper under the eighth criterion as well. Further, the record does not present sufficient evidence for the Arbitrator to determine that the cost of any change in the definition of overtime is consistent with the financial impact criterion. In accordance with the lawful authority criterion, the Arbitrator will award language specifying that the overtime provisions shall be paid "in accordance with the Fair Labor Standards Act, 29 U.S.C. 207 et. seq."

Both parties have advanced proposals with respect to the Grievance Procedure Article. Under the public interest criterion and the ordinary and traditional component of the eighth criterion, the Arbitrator finds

both of the proposed changes to be reasonable. Specifically, the Union's proposal to delete Step IV, paragraph B, and the City's proposal to amend Step IV, paragraph D (costs to be borne equally by the parties regardless of outcome) shall be awarded herein.

The Employer's proposal to eliminate all longevity payments as of December 31, 2012 is rejected as unwarranted under the record. The evidence establishes that the other public safety bargaining units all have longevity benefits and the public interest, comparability and eighth criterion do not support the proposed change. Even the financial impact criterion, although it reflects the financial difficulties of the City, does not support the dramatic reduction in compensation that would result from the implementation of this proposal.

Based essentially on the comparability criterion the City's proposal to modify the Pay Period Article is deemed reasonable. The language awarded herein is directly parallel to one of the changes awarded in the Local 788 award. The change provides that in years

where there are 27 pay dates that the annual salary shall be divided into 27 equal installments rather than 26. The clarity of this proposal also advances that the change is in the public interest. The language awarded shall mirror that of the rank and file unit.

The Arbitrator does not find sufficient evidence in the record to support the Employer's proposed changes in the Retirement Article. It is true that the Sick Leave Article changes awarded in the Local 788 award have some similar concepts, however, the language differences appear substantial, without explanation, and there is simply no evidence to weigh in favor of implementing the City's proposals in this area. The changes proposed to amend Article IV, Retirement, are rejected for lack of sufficient evidentiary support.

Similarly, the Employer's proposals for changes in the Vacation Article must be rejected herein. Once again the language proposed appears somewhat similar to that found in the Local 788 award. However, the differences in language are more than minor and the record presents no specific evidence to support the

change. The reasons for the divergence in language from either the current contract or that of the rank and file contract remain unexplained. There is insufficient basis to order that the proposed modifications be implemented. .

The amendments proposed by the City for the Insurance, Health and Welfare Article, Section 3, are well-founded under the lawful authority criterion and comparability criterion. They are reflective of current statutory requirements and reasonably consistent, considering the time frame, with the Local 788 award as it applied to the rank and file Fire Fighters. The proposed changes to Article XXX, Sections 1, 4 and 5 are not supported by any persuasive supporting evidence. They shall not be awarded herein.

In conclusion, the package awarded as the resolution of the impasse between the City and the IAFF is a carefully balanced structure addressing all the statutory criteria. It reflects various factors, sometimes pointing in conflicting directions. For example, there is meaningful dissonance between

evidence relating to comparisons with the rank and file employees supervised by the IAFF unit members and evidence relating to the financial stress with which the City is faced. Similarly, larger raises in 2009 for the City's Police employees must be reconciled with a change in the current economic circumstances, even though the contract duration extends back to 2009. This impasse presented a remarkably complex series of issues set in a very complicated factual context. The components structured in the Award are inter-related and cannot be taken apart individually. They stand as an integrated, balanced package.

**A W A R D**

For the foregoing reasons IT IS HEREBY ORDERED that all issues in dispute in interest arbitration Docket No. IA-2009-069 are resolved as follows:

(1) The **Duration** of the contract shall be from January 1, 2009 through December 31, 2013.

(2) The **Salary** rates of all unit positions shall be increased by the following across-the-board dollar amounts:

Effective 1/1/2009 - \$1,904

Effective 1/1/2010 - \$1,562

Effective 1/1/2011 - \$1,592

Effective 1/1/2012 - \$1,625

Effective 1/1/2013 - \$ -0-

Notwithstanding wage rate increases in each year, retroactive wage payments shall be made only to January 1, 2011, based on the modified salary guide as of that date and then again on January 1, 2012. The

City shall have zero retroactive pay responsibility for 2009 or 2010.

(3) The **Overtime** provisions in Article XXII, Section 2, shall be amended to added the sentence, "Overtime under this provision shall be compensated in accordance with the Fair Labor Standards Act, 29 U.S.C. 207, et. seq."

(4) The **Grievance Procedure**, Article XIV, shall be modified in two sections. Article XIV, Step Four, Section b., shall be deleted from the contract. Additionally, Article XIV, Step Four, Section d., shall be revised to read as follows: "The costs of the arbitrator's services shall be borne equally by the parties regardless of outcome."

(5) The **Pay Period** provision, Article XXVII, Section 1, shall be revised to add the following:

In years where there are 27 pay periods, the bi-weekly pay shall be adjusted so that the annual salary shall be paid over the 27 pay periods, but there shall be no adjustment to the hourly wage rate.



(6) Article XXX, the **Insurance, Health and Welfare** provisions shall be revised to have Section 3 read as follows:

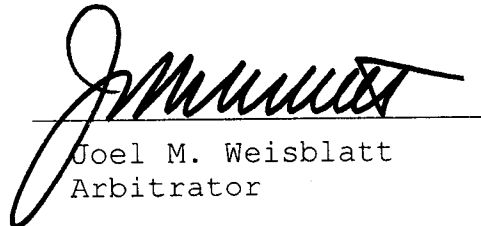
Notwithstanding other provisions of this Article, the City of Camden shall continue its Health Benefits Program, including all benefit and coverage levels, usual and customary rates and deductible charges for its employees and their families, subject to the conditions set forth in this Section.

Effective May 22, 2010, all employees shall contribute 1.5% of their base salary toward the cost of their insurance benefits. Effective June 28, 2011, all employees shall make contributions toward the cost of their insurance benefits in the amounts set forth in P.L. 2011 C.78.

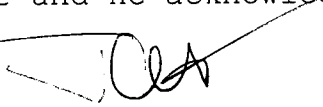
All employee premium contributions shall be deducted on a pre-tax basis as permitted by law. The City of Camden shall establish a Cafeteria Plan in accordance with the rules set forth by the Internal Revenue Service.

(7) The prior contract shall remain in full force and effect except as modified herein. All proposals or subsections of proposals, not awarded herein are denied because they lacked sufficient evidentiary support under application of the statutory criteria to the record.

Dated: October 22, 2012  
Skillman, N.J.

  
Joel M. Weisblatt  
Arbitrator

On this 22nd day of October, 2012, before me personally came and appeared Joel M. Weisblatt, 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.

---

Attorney-at-law