

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

In the Matter of the Interest Arbitration Between:

**NORTH HUDSON REGIONAL
FIRE & RESCUE**

Employer

-and-

**NORTH HUDSON FIREFIGHTERS
ASSOCIATION**

Employee Organization

**Interest Arbitration
Decision
-and-
Award**

Docket No. IA-2010-099

**Before
Timothy A. Hundley
Interest Arbitrator**

For the Employer:

Ramon E. Rivera, Esq.
Scarinci & Hollenbeck, LLC
Mr. Rivera and Christina Michelson, Esq.
On the Briefs

For the Association:

Bruce D. Leder, Esq.
Cohen, Leder, Montalbano & Grossman, LLC

The North Hudson Regional Fire & Rescue (“North Hudson” or “Regional”) and the North Hudson Firefighters Association (“Association”) were parties to a negotiated agreement covering the July 1, 2004 through June 30, 2009 time period. The Association is the exclusive representative for all firefighters employed by the Regional.

After the parties engaged in negotiations for a successor agreement, the Association filed a petition with the Public Employment Relations Commission (“PERC”), requesting the initiation of compulsory interest arbitration pursuant to *N.J.S.A. 34:13A-14 et seq.* On July 27, 2010, PERC appointed me interest arbitrator pursuant to *N.J.A.C. 19:16-5.6(d)* and the parties’ mutual selection. Accordingly, this case is governed by the interest arbitration procedures in place on July 27, 2010. *L. 2010, c. 105*, which went into effect on January 1, 2011, establishes new interest arbitration procedures, timelines, and standards for petitions filed on or after that date. *See L. 2010, c. 105, §4 and PERC’s Frequently-Asked Questions, Interest Arbitration Procedures (March 14, 2011).*

I conducted several joint mediation sessions between July 2010 and September 2011. However, the impasse persisted. Therefore, a formal interest arbitration hearing was held on September 12, 2011; October 5, 2011; October 18,

2011; October 26, 2011; and October 27, 2011. At the hearing, the Association and the County examined and cross-examined witnesses and introduced numerous exhibits into evidence. Post-hearing briefs were received on or about March 5, 2012. Also on March 5, 2012, the Regional submitted a certification by Jeffrey Welz, the Regional's Co-Executive Director. I admitted that certification over the objection of the Association.¹ Reply briefs were received by April 30, 2012; and the record was closed on that date.

The pre-2011 version of *N.J.S.A.* 34:13A-16f(5) called for an interest arbitrator to issue an award within 120 days of selection or assignment, albeit the statute also permitted the parties to agree to an extension. Pursuant to this latter provision, the Regional and Association have agreed to extend the time for issuing an award to September 14, 2012.

In addition, the pre-2011 version of *N.J.S.A.* 34:13A-16d(2) provided that the terminal procedure was conventional arbitration, absent the parties' mutual agreement to an alternate procedure. The parties here have not agreed to an alternative method of submission and this dispute therefore will be resolved by conventional arbitration.

N.J.S.A. 34:13A-16f(1) requires that each party submit a final offer. The Regional and Association final offers are as follows.

¹ The Association was given the opportunity to request another hearing date in order to cross-examine Mr. Welz. It elected not to do so.

REGIONAL'S FINAL OFFER

1. Article 3, Association Rights, Section A to be revised as follows:

Employees not to exceed two (2) (to avoid overtime), who are elected officers, delegates, trustees and/or alternates of the Association shall be granted two hundred (200) hours off from normal duties to attend union business. Once the two hundred (200) hours are exhausted, the Regional shall permit one (1) man off per day, provided it does not cause overtime. Any swap for Union business will not count toward the cap on swaps.

2. Article 3, Association Rights, Section E, Ceremonial Rights, to be revised as follows:

In the event a Firefighter or Fire Officer is killed in the line of duty, the Regional will permit at least two (2) Association Officers time off to participate in the funeral services if they are scheduled to work.

3. Article 13, Sick Leave:

All new hires as of July 1, 2011 shall be provided the following sick leave:

Years of Service	24 Hour Tours of Duty
1 st Year of Service through 15 th Year of Service	60 Hours or 2.5 Twenty-Four (24) hour tours
15 th Year of Service and thereafter	120 hours or 5 Twenty-Four (24) hour tours

4. Article 14 (Vacation):

- A. All vacation time is prorated in the final year of employment.
- B. Remove Section C and D in their entirety and replace with the following:
(New Section C) No more than seven (7) firefighters are permitted to take vacation during the summer or holiday period. During all other periods, no more than five (5) firefighters shall be permitted off.
- C. New Section D:

Effective July 1, 2011, existing firefighters working a twenty-four (24) hour tour, paid vacation leave shall be as follows and those Firefighters that have accumulated twelve (12) twenty-four (24) hour tours under the existing collective bargaining agreement shall be exempt from the proposal set forth below.²

Years of Service	24 Hour Tours of Duty
0 to 5 years of service	96 hours or 4 Twenty-Four (24) hour tours
6 years of service to 10 years of service	144 hours or 6 Twenty-Four (24) hour tours
11 years of service to 15 years of service	192 hours or 8 Twenty-Four (24) hour tours
After 16 years of service	240 hours or 10 Twenty-Four (24) hour tours

All new hires as of July 1, 2011 shall have the following vacation schedule (All vacation time shall be prorated):

Firefighters working a twenty (24) hour tour:

Years of Service	24 Hour Tours of Duty
1 st Year of Service	2
2 nd Year of Service through 6 th Year of Service	4
7 th Year of Service through 11 th Year of Service	5
11 th Year of Service through 15 th Year of Service	6
16 th Year of Service and Thereafter	8

Firefighters working eight (8) hour days:

² The Regional asserts that should the Arbitrator award the proposed reduction in vacation time for Firefighters working a 24-hour tour, a similar reduction should also be made for Firefighters working the 8 hour tour of duty which should be as follows:

- 1-5- years: 12 days
- 6 – 15 years: 14 days
- 16-20 years: 19 days
- 21 years and above: 24 days

Years of Service	8 Hour Days
1 st Year of Service	6
2 nd Year of Service through 6 th Year of Service	12
7 th Year of Service through 11 th Year of Service	15
11 th Year of Service through 15 th Year of Service	18
16 th Year of Service and Thereafter	24

5. Article 15, Holidays, to be revised as follows:

Effective July 1, 2011 for New Hires, there shall be eighty (80) hours of holiday pay per annum instead of one hundred and twenty (120) hours.

6. Article 16, Injury Leave, revise Section A(1), to read as follows:

Whenever a member of the Regional is incapacitated from duty because of an injury sustained in the performance of his duty, he shall be entitled to injury leave with all pay in accordance with the Workers' Compensation Act. This includes the statutory compensation provided in *N.J.S.A. 34:15-12(a)*, and as that law may be amended, is recognized as controlling the issue of payment for employees on temporary disability leave and will not exceed 70% of the worker's weekly wages received at the time of the injury, except as provided by law.

7. Article 23, Salaries:

A. Percentage Increases

- i. Effective 2nd pay period in June of 2010 – 2.0%
- ii. Effective 2nd pay period in June of 2011 – 2.0%
- iii. July 1, 2011 – 1%
- iv. July 1, 2012 - 1%

B. Any retroactive payments due under this proposal shall be paid as follows:

- i. 1/3 of retroactive payment within sixty (60) days of the execution of an agreement or issuance of the Interest Arbitration Award whichever comes first.
- ii. 1/3 of retroactive payment within one (1) year of the date of the payment referenced in the above paragraph (i).
- iii. 1/3 of retroactive payment within one (1) year of date of the payment referenced in the above paragraph (ii).

8. Article 24, Longevity:

Effective July 1, 2011 for New Hires, the following longevity schedule will be implemented:

Years of Service	% of Base Annual Salary
Beginning 9 th year of service	2%
Beginning 15 th year of service	4%
Beginning 20 th year of service	6%

9. Remove Article 25 (Education Incentive) in its entirety.

10. Article 26, Terminal Leave, Revise Section A to read as follows:³

- A. Effective July 1, 2011, terminal leave shall consist of unused accumulated sick leave and shall be paid out at ½ value after retirement. Payment for vacation time shall be consistent with two (2) year cap as per Civil Service Rules.
- B. With respect to the payment of terminal leave benefits, the Regional proposes the following:
 1. Any member, who currently has terminal leave benefits valued at over \$15,000, shall have the number of terminal leave hours frozen and fixed as of **January 1, 2012**. The value of the frozen and fixed terminal leave hours shall also be calculated and fixed to a dollar amount on **January 1, 2012**. That dollar amount shall remain the same and shall be paid out upon retirement.

³ A footnote included within the Regional's final offer states: "The Regional and its Fire Officers in February 2012 reached a tentative agreement on the payment of terminal leave benefits, which was based upon the same terms set forth above."

2. Any member who has yet to reach the cap referenced in paragraph 1 shall continue to accrue terminal leave benefits up to a value of \$15,000.
3. Members shall be permitted to continue to accrue and utilize sick time under the terms of the CBA; however, payment for any accrued sick time upon retirement shall be capped in accord with these terms.
4. Members shall also be allowed to use vacation time in accordance with the terms of the CBA; however, payment for any unused vacation time shall be capped by these terms.
5. For retired Union members, who have been paid one-fifth (1/5) of the value of their terminal leave benefits, the Regional shall pay the remaining balance due of the terminal leave benefits at retirement as follows:
 - a. Members with a remaining balance of terminal leave benefits valued between \$15,000 and \$30,000 shall be paid over a two (2) year period in equal installments. The remaining payments will be made within thirty (30) days of the member's anniversary of their retirement day in the following years – 2012 and 2013.
 - b. Members with a remaining balance of terminal leave benefits valued between \$30,000 and \$50,000 shall be paid over a three (3) year period in equal installments. The remaining payments will be made within thirty (30) days of the member's anniversary of their retirement date in the following years – 2012, 2013, and 2014.
 - c. Members with a remaining balance of total terminal leave benefits valued at over \$50,000 shall be paid the balance due over a four (4) year period in equal installments. The remaining payments will be made within thirty (30) days of the member's anniversary of their retirement date in the following years – 2012, 2013, 2014, and 2015.
6. For all future retirees, the Regional shall pay terminal leave benefits, at retirement, in the following manner:

- a. Members with total terminal leave benefits valued at \$15,000 or less shall be paid no later than sixty (60) days after their retirement date.
- b. Members with total terminal leave benefits valued between \$15,000 and \$30,000 shall be paid over a two (2) year period in equal installments. The first terminal leave payment shall be made within sixty (60) days of the member's retirement date. The second payment shall be made thirty (30) days after the first (1st) anniversary of the member's retirement date.
- c. Members with total terminal leave benefits valued between \$30,000 and \$50,000 shall be paid over a three (3) year period in equal installments. The first terminal leave payment shall be within sixty (60) days of the member's retirement date. The remaining payments shall be made within thirty (30) days after the first (1st) and second (2nd) anniversary of the member's retirement date.
- d. Members with total terminal leave benefits valued at over \$50,000 shall be paid over a five (5) year period in equal installments. The first terminal leave payment shall be within sixty (60) days of the member's retirement date. The remaining payments shall be made within thirty (30) days after the first (1st), second (2nd), third (3rd), and fourth (4th) anniversary of the member's retirement date.

If the first payment made under sub-paragraphs b, c, and d above is under \$15,000, a member can request to increase the first payment to \$15,000 if the amount will be placed in VALIC or an approved deferred compensation plan.

11. Article 28, Overtime, and revise as follows:

A. Revise Section H to read as follows:

When required by the Regional to attend training for the purpose of retaining certification of qualifications, or continuing education and training. Employees will **receive compensatory time that will not accumulate toward any terminal leave benefit.** All tuition incurred in the required training programs will be paid

by the Employer upon satisfactory completion of the course. The Regional retains the discretion to require training during the regularly scheduled workweek.

12. Article 31, Health Insurance:

A. The Regional proposes **that it will provide health coverage for employees that mirrors the New Jersey State Health Benefit Plan.**

B. Revise Section G to read as follows:

Effective July 1, 2011, all current Firefighters (including dependents) who retire shall receive the same level of health benefits as active employees and those benefits in retirement are subject to change as the benefits of active employees change.

Effective July 1, 2011, all new hires who retire shall receive the same level of health benefits as active employees for themselves only. After retirement, retirees cannot add any new dependents.

13. Remove Article 35 (Clothing and Uniform Allowance), Section A in its entirety.

14. Miscellaneous, Section E (Parking Fees), shall be removed in its entirety.

15. Article 49 (Duration of Agreement): July 1, 2009 through June 30, 2013.

ASSOCIATION'S FINAL OFFER

1.	Percentage Increase:	7/1/09	4%
		7/1/10	3%
		7/1/11	3%
		7/1/12	3%
		7/1/13	3%

2. Length of Contract: July 1, 2009 through June 30, 2014

3. Longevity payments: adjust the second tier to reflect the following:

Beginning with 20th year to 23rd year 9% of base annual salary

Upon completion of 23rd year and each
year thereafter

11% of base annual salary

4. Acting out of title compensation, add the following:

Whenever a firefighter assumes the position of a company officer on a temporary basis due to an extended medical leave of more than two (2) days or due to a vacancy, the firefighter will be compensated by the payment of \$300.00 per each 24-hour period.

5. Vacation Policy:

The practice of using a “buffer” when firefighters are requesting a vacation day shall apply when the member is requesting a day that the allotted vacation slots have already been filled. If a member requests a vacation day and the allotted slots for firefighters (10 on holidays and summer period and 7 during all other times) has not been reached, that member will be granted the time off and the buffer will not apply.

6. Add to Vacation Article:

All firefighters will be permitted to bank up to the maximum number of days allowed per year of vacation days.

7. Union Leave Time: Reword Article 3, Section B to read as follows

The Regional will permit authorized Association representatives reasonable time off with pay to attend to Association business which includes but is not limited to, local association meetings, valor award ceremonies, county, state or international meetings, other meetings relevant to association labor, health and safety issues, investigation and meetings concerning grievances and to attend meetings with Regional officials.

8. Union Leave Time: Add the following:

The President of the Association or his designee will be on a full release from normal shift work to attend to Association business. While the President is on full release he will continue to receive all wages and benefits afforded him as if he were on the line. His seniority will continue as if he were on the line. During the time that the President is released from normal

shift work, he will be responsible for all yearly training that is required and shall be available for active firefighter duties if necessary.

9. Union Leave Time: Add the following:

The Regional will permit on duty apparatus (minimum of 1 from each of the 3 battalions) to attend local Association meetings, NHRFR management committee meetings and other department run meetings, i.e., safety meetings, valor committee meetings, etc. While these units are attending said meeting, they will remain on duty and will be prepared to respond.

10. Employee Use of Apparatus:

All fire apparatus will be permitted to visit local food establishments within their area of coverage for the purpose of obtaining necessary food supplies needed for their 24 hour shift.

11. Bidding:

There shall be a bidding system by seniority with limited exceptions for all vacant positions. The purpose of this bidding system is to permit more senior firefighters the opportunity to work at a location of the firefighter's choice. Bidding will only be permitted to positions which have become vacant (due to retirement, promotion, discharge, etc.). The most senior bidding firefighter shall be awarded the position so long as that firefighter is qualified for the position (engine, ladder, rescue, boat/marine). The Regional shall have the authority not to award a bid to the most senior bidding firefighter if the Regional can show that a different firefighter has special skills for the position or that the assignment is necessary for training.

By September 15th of each year, the North Hudson Firefighters Association shall advise the Regional of the positions which have become vacant during that calendar year or will become vacant due to a retirement between September 15 and December 31. The Regional, no later than September 30, shall confirm that the list prepared by the Association is accurate. In the absence of communication from the Regional, it will be assumed that all vacancies identified are accurate.

The Association will notify all members of the vacancies and allow two (2) weeks for the submission of bids. Any member with three (3) or more years

of completed service as of December 31 of the current year who is also qualified may submit a bid to fill a particular vacancy.

On or about October 15, the Association will advise as to who the successful bidders were. Immediately thereafter the second round of bidding shall be conducted. These are vacancies created by the successful bidders. All firefighters will be given two (2) weeks to bid on a vacancy. After the conclusion of two (2) weeks, the Association will advise as to who were the successful bidders. All bids will be effective January 1.

At the conclusion of the second round of bidding, the Regional shall, if necessary, reassign firefighters to fill any positions deemed necessary. Among the factors to be used by the Regional in filling any vacancies shall be the skills and ability of a firefighter, the firefighter's preference among any remaining vacancies, seniority and any other factor deemed relevant. The only firefighters eligible in this third round that will be moved are the most junior firefighter in a company.

After January 1 of each year, if a vacancy occurs due to retirement, promotion, discharge, etc. that temporary vacancy shall be posted for two (2) weeks. It shall be awarded to the most senior qualified bidder. In the event that no one bids, the least senior junior firefighter in the department shall be reassigned to that position.

In October when the bidding is done for the next year, positions filled during the year (temporary vacancies) shall be deemed vacant positions.

12. PAC:

The Regional agrees to make deductions for contributions to the Political Action Committee. Any firefighter wishing to make such contributions shall complete the necessary document authorizing the Regional to make such a deduction.

STATUTORY FACTORS

I am required to resolve this dispute based on a reasonable determination of the issues, giving due weight to those statutory factors set forth in *N.J.S.A. 34:13A-16g* deemed relevant. The nine statutory factors are as follows:

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

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

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

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

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

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other 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, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c. 62⁴ (C40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or

⁴ In July 2010, N.J.S.A.40A:4-45.45 was amended by L. 2010, c. 44.

panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services; (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

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

(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).

BACKGROUND

This interest arbitration proceeding involves the Regional and the approximately 167 rank-and-file firefighters in its employ. The Regional itself was created in 1998, pursuant to the Consolidated Municipal Services Act (CMSA), *N.J.S.A. 40:48B-1 et seq.* It replaced the paid fire departments in Weehawken, Union City, North Bergen, West New York and Guttenberg and was formed as a

Joint Meeting under the CMSA, a statute that authorizes two or more municipalities to enter into a joint contract for the provision of fire protection and other services. *N.J.S.A. 40:48B-2.1a*. The Regional was created in order to consolidate the delivery of fire and rescue services for the participating municipalities; save costs; and improve response time. *North Hudson Regional Fire and Rescue*, P.E.R.C. No. 2004-17.

While a Joint Meeting is a political subdivision of the State, *N.J.S.A. 40:48B-2.1a*, it does not have the authority to directly tax residents. Instead, the Regional's annual operating costs and expenses are allocated among the five participating municipalities in accordance with their joint contract. Annual municipal contributions are based on percentages determined by cumulative values of new construction within each municipality, which assessments are added to the original base year costs. *See 2010 Annual Financial Statement (2010 AFS)*, p. 8.

The Regional is not subject to the CAP laws set forth at *N.J.S.A. 40A:4-45.1a et seq.*, and *N.J.S.A. 40A:4-45.44* through *45.47*. However, the Regional's participating municipalities are governed by those statutes. In 2010, the Regional's total operating revenue of \$55,795,905.10 was comprised largely of municipal contributions (2010 AFS, p. 9).

Since it began operations on January 1, 1999, the Regional has provided fire protection services to over 200,000 citizens in one of the most densely populated

areas of the country. Indeed, *North Hudson* observed that the Regional was the most densely populated, and third most populous, political subdivision in New Jersey to be served by a single fire department.

In addition to fire suppression, Regional firefighters serve as medical first responders for incidents on the commuter, train, and light rail tunnels that cross the Hudson River into New York City. Unit members are also deployed for incidents on the Hudson River itself. In 2009, Regional firefighters were the first on the scene when Captain Chesley Sullenberger safely landed a US Airways jet in the Hudson River.

The Regional was also one of the founding members of the North Jersey Urban Areas Security Initiative (USAI). In that capacity, unit members are trained to respond to structural, confined space and road collapses, where they are charged with locating, extracting, and medically stabilizing victims trapped in these situations. UASI responsibilities also extend beyond “collapse emergencies” to transportation incidents; weather emergencies; terrorist incidents; and technological accidents. The Regional also has a Hazmat team and all unit members are trained in Hazmat awareness (Association Binder 1, Tab 2, pp.28-35).⁵

⁵ Many of the Association’s exhibits are collected into two binders, each of which is subdivided into several sections, which I have numbered.

While the Regional currently employs approximately 167 firefighters there has been significant attrition in recent years due to retirements and legal constraints on the Regional's ability to hire new firefighters. On December 21, 2010, a federal District Court granted the NAACP's motion for summary judgment and permanently enjoined the Regional from hiring new firefighters from its Civil Service list (2010 AFS, p. 30). The gravamen of the lawsuit was that the Regional's residency requirement had a disparate racial impact.

Overall, the Association reports that firefighters manage over 7,000 incidents per year, including a Paterson building collapse in October 2009 and the Hackensack Parking garage collapse in July 2010 (Association Binder I, Tab 2, pp. 13, 33). In September 2006, firefighter Vincent Neglia paid the ultimate sacrifice and died in the line of duty. (Association Binder 1, Tab 2, p. 9).

This is a complex interest arbitration in which the parties have presented an extensive range of proposals on salary, longevity, terminal leave payments, sick leave, vacation time, health benefits, union business, assignment bidding, acting pay, and overtime . The Regional and the Association each urge that the nine statutory criteria weigh in favor of their respective proposals on all of these items, and they have each submitted comprehensive briefs and reply briefs as well as voluminous exhibits.

The record includes, among other items, the Regional's Annual Financial Statements for 2008, 2009, and 2010; documents describing the training and job duties of unit members; recent interest arbitration awards; PERC-compiled settlement data; and exhibits detailing the salaries, benefits, and settlements received by other public and private employees, including other firefighters in Hudson County and northern New Jersey and police officers employed by the Regional's participating municipalities. Federal and state data on the cost of living and information on private sector salaries and wage increases are also among the submissions, as are negotiated agreements pertaining to firefighters and police officers in northern New Jersey.

I have carefully reviewed this documentary record and considered the testimony of all management and labor witnesses, including Association President Dominick Marino; Association Vice President Tim Colacci; the Regional's two Executive Directors Jeffrey Welz and Michael DeOrio; and two members of the Regional's Board of Trustees: Richard F. Turner, Mayor of Weehawken, and Christopher Pianese, North Bergen's Business Administrator (and former Chief Financial Officer for the Regional). Also testifying on behalf of the employer were Thomas Fletcher and Dominick Scienelli, representatives of Brown & Brown Metro, the Regional's Group Benefits Manager. I have also taken arbitral notice of certain information posted on governmental websites, including the most recent

PERC Salary Analysis and federal Bureau of Labor Statistics (BLS) reports on consumer price increases.

My analysis has also been informed by recent legislation that has a bearing on this proceeding. *L. 2010, c. 44*, was approved July 13, 2010 and amended *N.J.S.A. 40A:4-45.44* to 45.47, to reduce the property tax levy cap for school districts, counties and municipalities from 4% to 2%. The Act states that it “shall be applicable to the next local budget year following enactment.” Also pertinent is *L. 2010, c. 2* (“Chapter 2”), which directs that all employees of counties and other local units shall pay 1.5% of their base salary as a contribution toward health insurance premiums. It took effect on May 21, 2010, except for employees covered by a collective negotiations agreement in effect on that date. For those employees, the statute applies once the contract expires.

Finally, *L. 2011, c. 78*, signed on June 28, 2011 (“Chapter 78”), requires that employees of counties and other local units pay a statutorily-fixed percentage of the premium cost for their health benefits coverage. The applicable percentage depends on the employee’s salary and the type of coverage chosen and is phased in over four years. The statute also increases the Police and Fire Retirement System (PFRS) employee contribution from 8.5% to 10% of the employee’s base salary.

The following is a summary of the arguments presented by the Regional and the Association.

REGIONAL'S POSITION

The Regional vigorously argues that the nine statutory factors support its own final offer, which the Regional contends is fair, reasonable, and responsible given the current economic climate in New Jersey. The Regional maintains that its offer strikes the important balance between putting forth a responsible financial proposal and, at the same time, offering a competitive compensation package for firefighters. Further, the Regional characterizes its proposal as more aligned with the most recent trends in interest arbitration awards. It stresses that its offer will enable the Regional to maintain fiscal stability; provide employees with health insurance benefits; and reduce overall costs associated with overtime and terminal leave. Conversely, the Regional asserts that the Association has failed to justify the financial impact of its final offer and has proposed several items that attempt to circumvent the Regional's managerial prerogatives.

The following is a review of the Regional's analysis of the statutory criteria, as well as a summary of the Regional's arguments in support of its salary, health insurance and vacation scheduling proposals. I address the Regional's arguments on the remaining disputed issues later in this opinion, in the course of ruling on them.

Interest and Welfare of the Public and Lawful Authority of the Employer

The Regional notes that the New Jersey Supreme Court decision in *PBA Local 207 v. Borough of Hillsdale*, 137 N.J. 1 (1994), emphasized both the centrality of the public interest criterion and an arbitrator's obligation to take into account the appropriations CAP set forth at *N.J.S.A. 40A:4-45.1 et seq.* Similarly, the Regional observes that *N.J.S.A. 34:13A-16g(5)* directs that an arbitrator consider the 2% tax levy CAP imposed by *N.J.S.A. 40A:4-45.44* through 45.47. The Regional underscores that its constituent municipalities are all subject to these CAPs, and it highlights how Mayor Turner and Business Administrator Pianese each described how the high unemployment rate in the County; the increase in tax appeals; and the dramatic cuts in State aid have severely affected the municipal budgets in Weehawken and North Bergen. As one example, the Regional observes that Weehawken has received approval to implement 24 unpaid furlough days for its non-uniformed employees.

The Regional argues that the budgetary constraints experienced by its member municipalities have necessarily reduced the funds available for its own operating expenses. And while the Regional recognizes that this arbitration is not subject to the 2% salary cap imposed by recent amendments to the interest arbitration statute, it nevertheless argues that public policy considerations weigh in favor of applying that limitation here.

In particular, the Regional urges that the following fiscal challenges support an award of its proposed salary increases of 2% effective the second paycheck in June 2010; 2% effective the second paycheck in June 2011; 1% effective July 1, 2011; and 1% effective July 1, 2012.

- The Regional's operational budget has grown over \$3 million between 2009 and 2011, from \$54,250,390 to \$57,265,285 in 2011 (Exhibit R-14).
- Health care and pension costs were projected to increase by a total of approximately \$4 million in 2011 (Rb18; Exhibit R-14).
- Unit member salaries have already increased substantially between July 1, 2009 and June 30, 2011 due to longevity payments, step increases, and service differential (Exhibit R-18). During the same time period, the Regional paid \$233,713 in terminal leave payments to retiring firefighters. Further, a total of \$1,141,434.61 was owed for the 24 firefighters who retired between 2008 and 2011 (Exhibits R-18; R-25).⁶
- The Regional states that it has experienced a "staggering" rise in employer pension contributions as salaries have increased due to step movement and longevity schedules. The Regional's pension obligation alone rose from approximately \$6.7 million in 2009 to \$8.6 million in 2011 (Exhibit R-18).

The Regional maintains that its final offer will help combat these growing expenditures, while still affording firefighters a competitive compensation package.

⁶ The Regional explains that it has exercised its statutory authority to remit terminal leave payments in equal annual payments over a period of five years (Regional's brief, p. 53). See *N.J.S.A. 40A:4-53(h)*.

By contrast, the Regional writes that the Association's salary offer completely ignores the economic crisis afflicting New Jersey municipalities. The Regional adds that the Association's proposals to increase longevity, union leave, and implement acting pay would all impose excessive costs on the Regional. In particular, and as detailed *infra*, the Regional emphasizes that this unit's longevity benefit has already increased dramatically in recent years and has infringed upon the Regional's operating budget.

Comparisons with Other Employees

The Regional urges that the comparability criterion, *N.J.S.A.* 34:13A-16g(2), favors the award of its own final offer because unit members are already well compensated when compared with Hudson County and State employees who perform the same or similar services.

The Regional begins its discussion by observing that it is not the only employer who has sought "financial assistance through the interest arbitration process." Based on its review of recent interest arbitration awards, the Regional concludes that they reflect a trend toward wage freezes within the salary guides; 0% base salary increases in some contract years; and lower salary increases throughout the contract term. *See Rivera Certification and Exhibits attached thereto.* In summarizing these awards, most of which were issued during 2009 through January 2012, the Regional indicates that none of the awards include an

across-the-board rate increase above 2.85% for any contract year, with most annual increases falling well below that figure. As such, the Regional maintains that its wage proposals are far closer to recent interest arbitration trends than are the 3% and 4% across-the-board increases sought by the Association.

With respect to comparisons with public employment in general, the Regional observes that the Act mandates comparisons with both uniformed and non-uniformed employees. Accordingly, it refers to the May 2010 State Occupational Employment and Wage Estimates for New Jersey, a document prepared by the federal Bureau of Labor Statistics (BLS). This report shows a mean annual salary for all New Jersey occupations of \$50,730 (Exhibit R-33, p. 1). The Regional states that an arbitrator can no longer assume that a uniformed employee is automatically entitled to a higher percentage increase than a non-uniformed employee.

With respect to other firefighter salaries, the Regional notes that this unit's maximum 2009 base salary of \$79,424 is in the middle range among comparable northern New Jersey municipalities. Exhibit R-81, R-83, R-84 & R-87, show the following comparisons:

Municipality	First Step Salary	Maximum Salary	Year
City of Bayonne	\$34,115	\$57,118	1/1/2003

City of Elizabeth	\$40,804	\$71,456	7/1/2004
City of Hoboken	\$37,298	\$82,211	7/1/2006
City of Jersey City	\$36,516	\$74,468	1/1/2005
City of New Brunswick	\$33,923	\$85,695	1/1/2010
City of Newark	\$40,591.41	\$92,059.27	1/1/2012
City of Paterson	\$30,657	\$85,580	7/1/2009
Town of Harrison	\$34,481	\$83,530	1/1/2011
Town of Kearny	\$30,374	\$98,823	7/1/2011
Town of Irvington	\$38,736.26	\$76,313.39	10/1/2007
Township of Montclair	\$28,177	\$81,371	12/31/2008
Township of West Orange	\$40,240	\$80,444	1/1/2009
North Hudson	\$34,222	\$79,424	6/30/2009

The Regional contends that the unit's mid-range salary levels must be considered together with longevity, education, and life insurance benefits that are equal to or higher than those in these comparable jurisdictions. The Regional observes that those firefighters hired on or after regionalization receive longevity payments beginning at 2% of base pay for five to eight years of service, up to a maximum benefit of 9% for those with 23 or more years of employment. Firefighters previously employed by member municipalities generally receive

anywhere from 4% to 14% of base pay, albeit some firefighters enjoy a higher percentage (up to 21% of base pay), because they retain the longevity benefit they had attained under prior municipal agreements.

The Regional continues that while North Hudson firefighters receive employer-paid life insurance and educational incentives for advanced degrees, these benefits are not offered by all of the comparable jurisdictions (Exhibits R-66; R-72). The Regional additionally contends that its data shows that North Hudson firefighters with 15 or more years of service enjoy an above-average number of sick days, while the vacation benefit is in the average range (Exhibits R-60; R-69).

The Regional believes that, taken together, these exhibits demonstrate that its proposed across-the-board salary increases are reasonable. In addition, it maintains that the documents show that many contractual benefits can be reduced or modified without negatively affecting unit members.

Overall Compensation

The Regional's discussion of the overall compensation criteria meshes with its comparability analysis. It reiterates its position that the unit's salary and benefit package is already very competitive, consisting as it does of sick leave; injury leave, sick leave use incentive compensation; longevity; service differential; and leave for funerals, jury duty and emergencies. In addition, the Regional notes that firefighters enjoy medical, prescription, vision and dental coverage, as well as

additional compensation for court time; off-duty training; holdover or recall duty; off-duty details; and early call-ins. Finally, firefighters also receive educational incentive pay; terminal leave; a uniform allowance, and a legal representation benefit.

In this context, the Regional insists that its final offer does not negatively impact the overall strong compensation enjoyed by the firefighters. It reasons that if any increases are ordered in this arbitration, they need only be minimal given that the Association's compensation package compares favorably with that in surrounding municipalities.

Financial Impact of the Award

In addressing the financial impact criterion, the Regional takes a two-pronged approach. First, it maintains that its combined salary, longevity, terminal leave and other proposals are essential to counteract a history of "constant increases" in these items. Second, it strongly contends that the Association's own proposals concerning longevity, salary, and acting title pay would negatively affect the Regional's budget.

In urging the award of its own final offer, the Regional argues that, after the expiration of the predecessor contract on June 30, 2009, firefighter salaries increased significantly due to step increments; enhanced longevity; and service

differential.⁷ The Regional calculates that, as a result of these factors, it paid out \$725,109.49 in additional salary between July 1, 2009 and June 30, 2011, separate and apart from any across-the-board rate increases that may be awarded in this proceeding (Exhibit R-18). In this posture, the Regional underscores the reasonableness of its own salary proposal.

The Regional also urges that its longevity and terminal leave proposals are necessary to control the excessive costs that it has continued to incur for these items. The Regional comments that longevity payments have dramatically escalated over the years as firefighter salaries have risen. It writes that it is therefore proposing a reduced longevity schedule for new hires in an attempt to protect the Regional's future budgets. The Regional points out that it is willing to retain a longevity benefit that is tied to a percentage of salary, and characterizes its proposal as a reasonable cost-efficient compromise. By contrast, it asserts that many arbitrators have begun to either eliminate longevity for new hires and/or freeze longevity for current employees, often at a set dollar amount.

The Regional also maintains that it is essential that terminal leave payouts be capped at \$15,000. In a related vein, it asks that the Regional be afforded additional flexibility in making installment payments. It highlights that under the existing benefit structure, one firefighter retired with an \$87,660 payment and

⁷ Service differential is a benefit that applies only to firefighters previously employed by North Bergen or Weehawken and is limited to the benefit that they earned as of December 31, 2002 (Exhibit R-8, p. 26).

seven others received \$75,350. Finally, the Regional states that its proposals to reduce sick days, vacation days, holidays, injury leave, and union leave are all linked to financial considerations and the need to protect the Regional from “exorbitant overtime costs,” which amounted to \$2,080,148 in 2011 (Welz Certification).

While the Regional maintains that its own final offer would protect the fire district’s operating budget, it contends that the Association’s several economic proposals would have an extremely negative financial impact. For example, the Regional asserts that there is no warrant to award the Association’s proposal to increase the longevity benefit at the 20-year and 23-year levels, given that members already have richer longevity benefits than many of their counterparts in comparable jurisdictions. Similarly, the Regional estimates that the Association’s acting pay proposal would cost \$169,000 annually (Exhibit R-21), a figure that it contends cannot be justified in the current economic climate. Further, the Regional stresses that the various Association proposals to increase leave time would also increase already burdensome overtime costs.

Based on the foregoing, the Regional urges that its final offer is the most financially responsible.

Cost of Living

The Regional asserts that its final offer is compatible with the cost of living, and cites BLS statistics indicating that the Consumer Price Index for all Urban Consumers (CPI-U) increased only 0.4% in August 2011 (Exhibit R-27). In this context, the Regional states that its final offer will not impair unit members' standard of living. It comments that its proposals are reasonable in an environment where wages and home ownership are declining (Exhibit R-34).

Continuity and Stability of Employment

The Regional observes that the continuity and stability of employment criterion relates to such employment issues as layoffs, givebacks and salary freezes. It reasons that its own final offer will create more stable employment within the fire and rescue district because the several cost saving measures it has proposed will allow it to retain the current work force. The Regional underscores that while many jurisdictions throughout the State have had to lay off firefighters during the past few years, it has not done so.

The Regional explains that it has been able to avoid layoffs and demotions in part because of the many firefighter and fire officer retirements. At the same time, the Regional emphasizes that these departures have not provided it with a windfall of excess funds, because most if not all of the savings were absorbed by rising health care, pension, terminal leave, longevity, overtime, and increment costs.

The Regional concludes that its proposals are reasonable in the current economic climate, which is marked by a Hudson County unemployment rate of 10.3% in 2011, above the State and national averages.

Health Benefits Proposal

The Regional stresses that the rising cost of employee and retiree health benefits is one of the biggest strains on the Regional's operating budget. It urges the award of its employee and retiree health benefits proposals, contending that they will help the Regional combat the constant cost increases in this area without negatively affecting employee or retiree health coverage.

The Regional highlights that, due to the Regional's extremely high usage rate, few carriers would even submit bids for providing health benefits coverage. It adds that the cost of basic health benefits coverage rose from \$4,773,502 in 2009 to a projected \$6,055,760 in 2011 (Exhibit R-14). By 2011, the prescription drug plan cost an additional \$1,900,000; the vision plan another \$47,088; and the dental plan an additional \$547,240 (Exhibit R-14).

The Regional contends that its proposal to provide coverage that parallels that of the SHBP is a reasonable cost savings measure that should be adopted. It notes that in many respects its existing coverage already mirrors that in the SHBP, albeit it has not implemented the changes adopted by that program after April 2008 (Exhibit R-96).

Similarly, the Regional maintains that its proposal for retiree health coverage would continue to provide insurance benefits to loyal employees who retire from the Regional. However, the Regional states that it will be better able to control spending if the contract were amended to state that, after July 1, 2011, current firefighters who retire shall receive the same level of benefits as active employees, “which benefits will be subject to change as the benefits of active employees change”. For firefighters hired after July 1, 2011, the Regional seeks to provide retiree health coverage to the retired firefighter only, not his or her dependents.

Vacation

The Regional stresses the critical nature of its proposal to reduce from ten to seven the number of firefighters who can be on vacation during the summer months and on holidays. The Regional also emphasizes the importance of its proposal to reduce from seven to five the number of firefighters who can be on vacation during all other time periods. The Regional explains that it now employs 36 fewer firefighters than when the existing figures were negotiated. As a result, it states that the current vacation provisions are burdensome and could potentially affect the Regional’s ability to provide timely fire suppression and emergency services.

ASSOCIATION'S POSITION

The Association urges that the nine statutory factors weigh in favor of the award of its final offer, and it strongly argues that nothing in the record justifies the draconian cuts that the Regional seeks. In addition, the Association underscores that this interest arbitration is not subject to *L. 2010, c. 105*, which constrains arbitrators from awarding more than a 2% increase in base salary.

In framing its statutory analysis, the Association urges the arbitrator to consider the interest arbitration statute's unusual declaration of public policy, which recognizes the life threatening dangers that firefighters and law enforcement officers face daily. Furthermore, the Association stresses that this unit in particular confronts very challenging working conditions. These include a service area that has a "staggering" population density of approximately 23,500 persons per square mile, as well as more than 1400 four-story buildings, many of which have overcrowded apartments that are occupied by illegal residents who delay calling for help (Association Binder 1, Tab 2, pp. 12, 14).

Against this backdrop, I turn to the Association's discussion of the statutory criteria. I address those proposals that are not referenced in this discussion later in this opinion, in the course of ruling on them.

Interest and Welfare of the Public

The Association writes that the public interest criterion requires the arbitrator to strike an appropriate balance between the interests of the taxpaying public and the need for high morale in a public safety department, where employees routinely face life threatening dangers. The Association reasons that employees are willing to work a little harder when morale is high, and it maintains that its proposals concerning out of title pay, vacation leave, union leave, job vacancy bidding and the use of fire apparatus are all low or no cost items that will improve the morale of unit members. It also insists that its salary proposal will not cause a violation of the statutory restrictions placed on municipalities, a point that it develops in its discussion of financial impact and the lawful authority of the employer.

Comparisons with Other Employees

The Association recognizes that this criterion directs comparisons with employees in private employment in general; employees in public employment in general; and employees performing the same or similar services in the same or comparable jurisdictions. The Association concludes that comparisons with private employees are unenlightening because no private employee performs services similar to those of firefighters.

However, the Association contends that a consideration of “public employment in general” is the most helpful and revealing in this proceeding. It maintains that comparisons with police employees in North Bergen, Union City and Weehawken are extremely relevant, because they are indicative of what the municipal members of the Regional believe is fair and reasonable. In this vein, the Association stresses that none of these contracts reflect the “substantial regressions” sought by the Regional. Thus, the Association emphasizes that while the Regional seeks to reduce sick leave from 10 to 5 days, two of the police contracts provide for unlimited sick leave and one (Weehawken), affords unit members 15 days a year. Similarly, the Association rejects the Regional’s vacation proposal on comparability grounds, noting that while the Regional proposes a reduction from 12 to 10 days, the three municipal police contracts entitle officers to anywhere from 24 to 35 days.

The Association also contends that an analysis of longevity and terminal leave benefits shows a similar pattern, with maximum police longevity schedules of 12% in North Bergen; 21% in Union City; and 12% in Weehawken. Similarly, North Bergen police officers may receive up to one year’s salary in terminal leave; Union City has no cap; and Weehawken has a cap on police officers hired after March 19, 2003, but no cap for employees hired before that date. In this context, the Association writes that the pattern of settlement established by the police

contracts in member municipalities demands a rejection of each and every term of the Regional's final offer. Finally, Association exhibits reflect that all three police units received 4% increases effective July 1, 2009, while Union City and North Bergen police officers received additional 4% increases on July 1, 2010 and North Bergen police benefitted from a 4% increase on July 1, 2011 (Association Binder 1, Tab 2, p. 56).

In continuing its comparability discussion, the Association argues that comparisons with other firefighters in Hudson County weigh strongly in favor of its own final offer. It maintains that this unit's benefit levels are already in the low to middle range in terms of sick leave, vacation, clothing allowance, terminal leave and longevity when compared to firefighters in Bayonne, Harrison, Hoboken, Kearny, and Jersey City. In this posture, it asserts that the Regional's proposals on these items are not justified and would widen the gap between benefits in North Hudson and those offered by comparable jurisdictions. The Association adds that the Regional's worker's compensation proposal disrespects employees and would, if awarded, make these firefighters the only firefighters in the region who would not be entitled to one year of paid leave for on-duty injuries.

Overall, the Association asserts that unit members are paid the median salary in Hudson County, and receive "fair to less than comparable benefits" vis-à-vis those afforded their counterparts. In this posture, the Association concludes that

maintaining the status quo will keep North Hudson firefighters from having the worst benefits by far among comparable jurisdictions. By contrast, the Association insists that award of any of the givebacks sought by the Regional would reduce their overall benefits. The Association also observes that, contrary to the offer made to this unit, the Regional's fire officers received a 4% increase effective July 1, 2009, as part of a July 1, 2004 through June 30, 2010 contract.

Overall Compensation

The Association observes that it has already outlined the overall compensation of unit members, including such items as direct wages, vacation, holidays, excused leave, insurance and pensions, and medical and hospitalization coverage. It continues that the primary inquiry under this criterion is whether North Hudson firefighters enjoy benefits not found in other fire personnel public employment contracts. The Association concludes that a perusal of the predecessor agreement reveals no such provision, a circumstance that it believes clearly favors the Association's final offer over that of the Regional.

In addition, the Association urges that the overall compensation criterion also includes consideration of the fact that unit members have begun making statutorily-mandated health benefits premium contributions. The Association notes that a firefighter who pays 7% of the health benefits premium will have less to take home, a situation that will worsen in future years, when contributions will increase

and salary increases may be capped at 2% of the unit's base salary costs for the prior year. In this environment, the Association concludes that inflation of any kind will erode the meager increases received after the deductions for health insurance contributions.

**Lawful Authority of the Employer; Financial Impact of the Award;
Statutory Restrictions Imposed on the Employer**

The Association begins by stating that the lawful authority; financial impact; and statutory restrictions criteria are inseparable. The Association then comments that in analyzing these factors, a salient point is that this interest arbitration is not subject to the 2% salary CAP set forth at *L. 2010, c. 105*. Nevertheless, because of attrition and a reduction in the total amount paid out in firefighter salaries between 2009 and 2011, the Association contends that even if its proposed 4% and 3% increases are awarded, the total base salaries for this unit would not increase by 2% annually.⁸ Indeed, it calculates that if the 2% base salary CAP were applied to the 2009 base salary figure, without adjusting for attrition and assuming a constant number of firefighters, the Regional would be able to expend \$16,126,103

⁸ In making its computations, the Association relies on Exhibit J-6. That exhibit indicates that total compensation for firefighters was \$15,195,987 for calendar year 2009; \$14,978,548 for calendar year 2010; and \$14,507,393 for calendar year 2011 (Exhibit J-6). The Association states that these figures reflect the salary costs actually incurred by the Regional and include increments, longevity, and service differential. The Association applies its proposed across-the-board rate increase to each of these figures. For example, for 2009, it adjusts \$15,195,987 by \$303,920 – one-half of the 4% increase proposed for July 1, 2009 through June 30, 2009. For 2010, the Association then adds the second half of the 2009-2010 increase (\$303,920), plus one-half of the July 2010-July 2011 increase (\$229,237) and adds these figures to \$14,978,548 (Ab41-42). The same method is used for 2011 and years following.

in firefighter base salary costs for calendar year 2011. By contrast, it computes that the actual cost under its final offer would be \$14,957,679 (Ab44).

Based on the foregoing, the Association asserts that the Regional's claims about the increased costs of the Association's offer are wrong, commenting that its analysis does not factor in the reduction in salaries caused by retirements. Put another way, the Association states that the Regional's proposed increases are grounded in budgeted numbers, whereas it is actual figures that need to be analyzed. Similarly, the Association argues that the \$725,000 in increment costs that the Regional highlights are already included in the base firefighter salary costs for 2009, 2010, 2011, because the Regional paid the increments, longevity and salary differential payments called for under the predecessor agreement.

Against this financial backdrop, the Association reasons that because firefighter salaries would not increase 2% under its final offer, its salary proposal would not run afoul of the expenditure and 2% tax levy CAPs that pertain to the Regional's participating municipalities. The Association notes that those CAPs exclude certain increases in health care costs and pension contributions.

Further, the Association states that multiple items in the Regional's 2010 AFS that reflect that "the Regional has been quite fortunate in its budget." The Association notes that the Regional had an appropriation balance of \$823,718 at the end of 2010 – an amount that, if not encumbered, could be used as revenue

(2010 AFS, p. 62). Similarly, the Association indicates that the Regional cancelled a \$1.005 million appropriation reserve at the end of 2010, thereby turning those funds into a new revenue source (2010 AFS, p. 47). The Association postulates that this pattern will likely be repeated in 2011, since the documents in the record show an almost \$800,000 appropriation reserve at the end of 2010. In sum, it concludes that the Regional's careful budgeting means that the employer's lawful authority would not be exceeded if the Association's offer were awarded.

Finally, the Association maintains that in assessing the impact of its final offer on the governing unit, its residents, and taxpayers, the most critical point to keep in mind is that the Regional's overall costs will be lower due to massive retirements and a lack of hiring by the employer. In addition to the decline in the total overall costs of firefighter salaries, the Association notes that the Regional will reap the benefit of the new employee contributions toward health insurance. Those contributions will amount to approximately \$1,973 per firefighter in the first year of the contract, and up to \$10,504 in the fourth year of the statute's implementation, 2014-2015 (Association Brief, Exhibit 2).

Cost of Living

The Association hypothesizes that in a perfect world, the cost of living would supply a reliable barometer for appropriate wage increases. However, it writes that when the cost of living is high, employers decline to link pay to the CPI

index. In this environment, the Association rejects the contention that employees must necessarily be saddled with low wage increases when the cost of living is low. It comments that there is no rule that raises must be limited to the CPI, stating that employees are entitled to improve their standard of living.

In addition, the Association argues that a new element to be considered under this factor is that the employee's contribution to health insurance will result in firefighters having less after-tax income than they would have had if any across-the-board increase had not been decreased by this substantial employee obligation. Overall, however, the Association contends that this statutory criterion deserves little or no weight.

Continuity and Stability of Employment

The Association states that this factor enables an arbitrator to consider anything not addressed under the other criteria. In that regard, the Association believes that the unique element that pertains to this proceeding is the Regional's inability to hire new firefighters because of legal restraints. In view of this circumstance, the Association questions why the Regional would propose a range of givebacks that would significantly diminish the unit's compensation and benefit package vis-à-vis that enjoyed by public safety employees in comparable jurisdictions.

The Association writes that the continuity and stability criterion may not be relevant to this interest arbitration, given that firefighters rarely move from the Regional to a municipal fire department. However, it also suggests that the Regional's drastic proposals could prompt firefighters to retire earlier, thereby leaving the Regional without the ability to recruit new, capable firefighters.

Conclusion

In summarizing its statutory analysis, the Association states that it has fully justified its several non-economic proposals, as well as its proposals for economic changes related to salary increases; acting out of title compensation; and a longevity increase for firefighters hired by the Regional. It states that the latter item will have no impact during this contract term.

By contrast, it states that the Regional seeks to shred the current contract with a machete. It contends that the record is devoid of any reasonable rationale for the Regional's cuts, which it summarizes as follows:

Contract Article	Reduction	Loss of Hours/Year
Sick Leave (new hires)	50%	120
Vacation Leave (all firefighters)	20%	48
Vacation Leave (new Hires)	33%	96
Holidays (new Hires)	30%	32
Injury Leave	30%	—
Longevity (new Hires)	33%	—
Clothing Allowance	100%	(\$650)

The Association also insists that there is no reason for the Regional's two-pronged proposal concerning retiree health benefits, and it stresses that the most important factor in deciding this case should be comparisons between this unit and police officers in the municipalities that comprise the Regional. It maintains that a review of those police contracts provides no support for the drastic changes sought by the Regional.

DISCUSSION AND ANALYSIS

My consideration of the parties' proposals is governed by *N.J.S.A.* 34:13A-16g and pertinent Court and PERC decisions. I must indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. *N.J.S.A.* 34:13A-16g; *Cherry Hill Tp.*, P.E.R.C. No. 97-119, 23 *NJPER* 287 (¶28131 1997).

In addition, I note that *N.J.S.A.* 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. Accordingly, I have been guided by the decision-making principles that are typically used in deciding interest arbitration disputes. One such principle is that the party proposing a change in an employment condition bears the burden of justifying it. I have applied that principle to the proposals in this proceeding, although I note that PERC has held that the "burden" construct has less salience in evaluating salary proposals, where

both sides typically propose changes and the award must contain a salary ruling.

Essex County, P.E.R.C. No. 2005-52, 31 *NJPER* 86 (¶41 2005).

Similarly, while I have evaluated the individual merits of each proposal, my award reflects the precept that an arbitrator must consider the totality of changes to be made to the existing agreement, as well as the cost and impact of the overall economic package. *N.J.S.A.* 34:13A-16d(2) reflects this latter concept by requiring that the arbitrator separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine criteria in *N.J.S.A.* 34:13A-16g.

This is a complex interest arbitration in which the parties have submitted disparate salary offers as well as extensive, detailed proposals on a broad range of economic and non-economic items. These wide-ranging proposals must be evaluated in the context of several pieces of recent State legislation that affect both this unit's overall compensation and the budgets of the Regional and its constituent municipalities. That legislation was in turn enacted in the aftermath of a severe, almost unprecedented recession, from which the State and national economies are still struggling to recover.

In arriving at an award, I am mindful of the budgetary restrictions under which the Regional and its participating municipalities must operate. I am also acutely aware that unit members provide an essential public service, often at great

risk to themselves. Indeed, North Hudson firefighters provide these services in one of the most densely populated and challenging environments in the country.

I conclude that all of the statutory factors are relevant but that not all are entitled to equal weight. My weighing and balancing of the nine factors, particularly those pertaining to the public interest, financial impact, lawful authority of the employer, statutory restrictions on the employer, and comparisons with other employees, leads me to award an overall economic package that contains across-the-board rate increases that are very close to those sought by the employer. However, the award does not incorporate most of the other changes sought by the employer (or the Association). While I believe that the award will maintain a reasonably competitive compensation package for these essential employees, the awarded salary increases are less than would likely have been arrived at in a more favorable budgetary and economic climate.

My decision-making has been informed by these factual conclusions and judgments:

- The Regional is well managed but, in contrast to 2008 and 2009, it incurred an operating deficit in 2010. In addition, the Regional's primary source of revenue is contributions from its participating municipalities, all of which are experiencing budgetary constraints as a result of the tightened tax levy CAP; reduced State aid; declining revenues from investments; and escalating tax appeals. Taxpayers and residents within the region are not affluent and Hudson County as a whole is characterized by a high unemployment rate and below average per capita income.

- Economic and budgetary difficulties at the State and local level have resulted in a changed negotiations landscape, with recent data showing declines in the percentage increases received by a range of private and public employees, including public safety employees. The salary portion of this award is consistent with, and within the range of, such increases.
- Among the best measures for assessing the competitiveness of this unit's compensation structure are comparisons with the Regional's own fire officers; firefighters in other Hudson County and urban jurisdictions; and police officers in the Regional's constituent municipalities. The awarded increases take into account such comparisons and aim to maintain a reasonable salary and benefit package. However, fiscal and other considerations preclude salary increases that parallel those negotiated in a different fiscal environment. At the same time, comparisons with the noted employee groups weigh against the award of the Regional's proposals to reduce a broad spectrum of contractual benefits.

Against this backdrop, the terms of my award are as follows:

1. Term of Agreement

July 1, 2009 through June 30, 2013.

2. Salaries

2.0% across-the-board increase effective January 1, 2010.

2.0% across-the-board increase effective January 1, 2011.

1.5% across-the-board increase effective January 1, 2012.

1.0% across-the-board increase effective January 1, 2013.

Each increase applies to all steps of the existing salary guide and is retroactive to its effective date.

3. Article 31, Health Insurance

Effective June 30, 2013, all current Firefighters (including dependents) who retire shall receive the same level of health benefits as active employees and

those benefits in retirement are subject to change as the benefits of active employees change.

4. Article 14, Vacation

Effective January 1, 2013, delete the first two sentences of Article 14, Section D and replace with the following:

Effective January 1, 2013, the number of firefighters permitted off on all holidays is seven (7). On all summer days seven (7) firefighters can be off and on all other days 5 firefighters can be off.

Cost of Award

A necessary prelude to the analysis mandated by *N.J.S.A.* 34:13A-16g is a costing out of the award. In calculating the cost of its proposed 2% increases for 2009-2010 and 2010-2011, the Regional advises that for the July 1, 2009 through June 30, 2011 time period, the total salary for this 167-member firefighter unit was approximately \$14 million annually (Rb21).⁹ The Regional uses this \$14 million figure as the benchmark for determining the value of a 2% increase for July 1, 2009 through June 30, 2010 (Rb21). Accordingly, that is the baseline figure that I also use for gauging the cost of the award and the parties' respective salary proposals.¹⁰ Consistent with the standard practice in interest arbitration, my calculations assume no resignations, retirements, or new hires during the term of

⁹ The record does not include the unit's base salary costs for July 1, 2008 through June 30, 2009.

¹⁰ Exhibit R-6 states that salary costs for the unit for all of calendar year 2009 were \$15,195,987. The difference between this amount and the employer's estimate for the July 1, 2009 through June 30, 2010 time frame appears to be attributable in large part to the many firefighter retirements during 2009, most of which occurred prior to July 1, 2009 (Association Binder 2, Tab 1).

the agreement. *See also Borough of New Milford, P.E.R.C. No. 2012-53* _____ *NJPER* _____ (§ _____) (reductions in costs resulting from retirements, or increases in costs related to training, should not affect the costing out of an award).¹¹

In making these calculations, I will treat the employer's proposed 2% rate increase for July 1, 2009 through June 30, 2010 as generating a 0% payout during that time period, given that the Regional proposes that the increase will not go into effect until the last two weeks of the contract year. The same approach will be used for the Regional's proposed 2% rate increase for the second year of the agreement, which would also take effect during the last two weeks of the 2010-2011 contract term.

The following chart indicates the rate increases and payout for each year under the Regional's proposal; the Association's offer; and the award. In the case of the Regional's final offer for 2009-2010 and 2010-2011, the delayed rate increases result in a flow through and payout in the subsequent contract year. The same is true of the award for all contract years.

	Regional	Association	Award
July 1, 2009-June 30, 2010	Rate: 2% Payout: 0%	Rate: 4% Payout: 4%	Rate: 2% Payout: 1%
July 1, 2010-June 30, 2011	Rate: 2% Payout: 2% from Year 1; 0% from Year 2	Rate: 3% Payout: 3%	Rate: 2% Payout: 2% (1% flow through from Year 1; 1% payout for Year 2 due to Jan. 1

¹¹ For this reason, I have not followed the Association's approach of costing out the proposals by applying the proposed increases to the actual salary figures for 2009, 2010, 2011, all of which reflect decreased salary costs due to retirements and legal constraints on hiring.

			effective date
July 1, 2011-June 30,2012	Rate: 1% Payout: 3% (2% from Year 2 & 1% for Year 3)	Rate:3% Payout: 3%	Rate: 1.5% Payout: 1.75% (1% flow through from Year 2; .75% payout for Year 3 due to Jan. effective date)
July 1, 2012-June 30,2013	Rate: 1% Payout: 1%	Rate:3% Payout: 3%	Rate: 1.0% Payout: 1.25 (.75% flow through from Year 3; .5% payout for Year 4 due to Jan. effective date)
Total:	Rate: 6% Payout: 6%	Rate: 13% Payout: 13%	Rate: 6.5% Payout: 6% plus .5% flow through into next contract

The dollar amount of the increases under the Regional's offer; the Association's offer, and the award are as follows.

	Regional	Association	Award
July 1, 2009-June 30, 2010	0	\$560,000	\$140,000
July 1, 2010-June 30, 2011	\$280,000	\$436,800	\$282,800
July 1, 2011-June 30, 2012	\$428,400	\$449,904	\$252,399
July 1, 2012-June 30, 2013	\$147,084	\$463,401	\$183,440
Total:	\$855,484	\$1,910,105	\$858,639 (\$932,932 including \$74,293 flow through)

For each contract year, the figures for the Regional and the Association assume that the total base salary for the preceding year was enhanced by an amount equal to the percentage increase (payout) that it has proposed; the same method was used

to calculate the cost of the award. During the term of the contract the payout required under the award is \$3,155 more than under the Regional's offer, albeit the first-year cost is higher and there is a flow-through of \$74,293 into the next contract term. Overall, the across-the-board increases attributable to the award are \$77,448 more than under the Regional's proposal and \$977,173 less than sought by the Association.

Neither party proposes to change the existing salary guide structure, where step movement occurs on an employee's anniversary date (Exhibit R-8, p. 20). Executive Director Welz testified that the Regional has been paying increments under that guide and the \$14,000,000 salary figure identified by the Regional appears to include not just base salary, but increments, longevity, and service differential (Rb21). However, for the first two years of the contract, the Regional has also separately identified the cost of increments and these other salary items. Those amounts are: \$128,059 for 2009-2010 and \$186,951 for 2010-2011, or \$315,010 for two years (Exhibit R-18, p.17)¹². The record does not include the actual increment (and longevity and service differential) costs for 2011-2012 and 2012-2013. However, a recent PERC decision, issued after this record closed, requires a statement of increment amounts in all interest arbitrations, including

¹² Exhibit R-18, p. 17, lists the annual step, longevity, or service differential increases to which employees became entitled during four six-month periods: July 1, 2009 to December 31, 2009 (\$47,995.12); January 1, 2010 to June 30, 2010 (\$80,064.17); July 1, 2010 to December 31, 2010 (\$105,985.52); and January 1, 2011 to June 30, 2011 (\$80,965.79). The Regional over-counts these six-month figures by, for example, listing the \$47,995.12 figure four times (Exhibit R-18, p. 17).

those not subject to the 2% salary CAP. *Cumberland County Prosecutor, P.E.R.C.* No. 2012-66 (June 25, 2012). For purposes of analysis, I estimate that increments (and related salary items) for 2011-2012 and 2012-2013 will parallel those in the first two years of the agreement. I thus attribute \$157,505 in increment and related costs for 2011-2012 and an additional \$157,505 for 2012-2013.

Pursuant to *N.J.S.A.* 34:13A-16d(2), I conclude that the above-noted total net annual economic changes for each year of the agreement are reasonable under the criteria listed in *N.J.S.A.* 34:13A-16g.

In placing the cost of the awarded increases in context, it is also useful to note that unit members are subject to two distinct statutory mandates that required them to pay, beginning in 2010 and 2011, health benefits costs that would otherwise have been absorbed by the Regional. Thus, on or about May 21, 2010, unit members were required to assume, by operation of law, a minimum contribution toward their health benefit premiums in the amount of 1.5% of their base salary. Chapter 2 was operative for the second year of this contract, July 1, 2010 through June 30, 2011, and required approximately \$210,000 in new health benefits contributions from unit members. Thus, while the awarded across-the-board increase for 2010-2011 totals \$282,800, the Regional also received \$210,000 in new employee health benefits contributions during that time period.

It is also instructive to consider the health benefits contributions mandated by Chapter 78. As noted, that statute directs that as soon as administratively feasible after June 28, 2011, employees who were not covered by a negotiated agreement in effect on that date must contribute 1.5% of their base salary *or* a designated percentage of the cost of their health benefits premium, whichever is greater. The statute is phased in over four years and the annual Chapter 78 contribution depends on the type of coverage selected, the employee's salary, and the cost of the premium.

Given these variables, it is not possible to calculate the Chapter 78 contributions for this unit with precision. In addition, the statute will not be fully implemented during the term of this agreement. Nevertheless, it appears that even during the first year that Chapter 78 goes into effect (July 1, 2011 through June 30, 2012), the Regional will receive additional contributions, beyond those mandated by Chapter 2, from top-step firefighters who choose dependent coverage. By way of example, a firefighter earning between \$90,000 and \$95,000 during 2011-2012 has a minimum Chapter 2 obligation of between \$1,350 and \$1,425 annually.¹³ However, an individual at this salary level who chooses family coverage would, under Chapter 78, be responsible for 7% of the annual 2011 premium of \$28,186 or \$1,973 (Association Brief, Exhibit 2). During 2011-2012, those individual

¹³ With longevity and holiday pay, many firefighters have salaries in this range or higher.

contributions will rise to \$3,946 annually, assuming no increases in the premium (Association Brief, Exhibit 2).

The rationale for the award is set forth in the following discussion, in which I evaluate the evidence on each statutory factor and describe how it relates to the awarded across-the-board salary increases. With that discussion as a foundation, I then address the parties' longevity, terminal leave, sick leave, acting pay, vacation, union business, health benefits, overtime, and job bidding proposals.

SALARIES

Interest and Welfare of the Public

The public interest and welfare, *N.J.S.A.* 34:13A-16g(1), is a broad criterion that encompasses a review of an employer's financial circumstances and an analysis of the compensation package required to attract and retain a productive and high-morale law enforcement department. This statutory factor also encompasses the public interest in labor relations stability. Further, it explicitly requires consideration of the CAP law set forth at *N.J.S.A.* 40A:4-45.1a *et seq.*, which limits the amount by which a municipality can increase its total final appropriations from the previous year to the lesser of 2.5% or a federally-prepared cost of living adjustment (COLA).

The New Jersey Supreme Court has underscored the central importance of the public interest in deciding interest arbitration disputes, *PBA Local 207 v. Bor.*

of Hillsdale, 137 N.J. 71 (1994). Accordingly, I have given this multi-faceted criterion substantial weight in determining salary increases and ruling on the parties' other proposals. Moreover, because the "public interest and welfare" synthesizes and integrates several of the considerations enumerated in other statutory factors, my discussion of this criterion touches on some points that are addressed in more detail later in this opinion.

As a threshold matter, the public interest is pertinent to the issue of contract duration, and it favors the award of a four-year agreement from July 1, 2009 through June 30, 2013. A four-year agreement is more reasonable than the five-year contract sought by the Association because the record contains virtually no internal or external comparability data beyond calendar year 2012. It is also difficult to gauge whether the budgetary pressures on the Regional and its municipalities will have eased by 2014, and there is still considerable uncertainty about whether the State and national economies will have fully recovered by that point.

I recognize that these factors are not an absolute bar to a five-year contract. Multi-year contracts are common in negotiations and interest arbitration, even though it is not possible to predict with assurance the exact budget circumstances a public employer will face in future years. However, the current economic and budgetary situation is more fluid than usual, and the public interest is best served

by a four-year contract that will allow the parties greater flexibility to adjust to future conditions.

The public interest must also be considered in resolving the parties' salary dispute. Specifically, the fiscal and compensation components of the criterion must be balanced in light of the particular economic and budgetary circumstances of the Regional and its member municipalities; the nature of the services that Association members perform; and the current compensation structure for this unit. An analysis of these factors highlights some of the atypical fiscal, contractual, and occupational factors that affect this proceeding.

Turning first to the working conditions of unit members, the Regional's mission is to provide fire suppression, surface water rescue and other emergency services to residents in one of the most densely populated areas in the nation. North Hudson firefighters perform essential and dangerous work, and their mission is made all the more challenging by a service area that includes many old, multi-story wood buildings. These structures are prone to rapid fire spread and collapse (Association Binder 2, Tab 2, pp.14-15).

Given the multi-faceted and rigorous responsibilities of unit members, the public has a strong interest in being served by a stable work force of dedicated firefighters. Thus far, it appears that this goal has been achieved: the Association

states that firefighters rarely if ever leave the Regional to work in municipal departments (Ab49).

I do recognize that there has been substantial attrition in this unit during the last few years as a result of both the approximately 22 firefighter retirements between 2008 and 2011 and the current legal constraints on the Regional's hiring (Association Binder 2, Tab 1). As a result, there has also been a decline in the total amount of compensation paid to this unit between 2009 and 2011 (Exhibit R-6). While the Association emphasizes this point in urging adoption of its final offer, it does not weigh in favor of higher salary increases than I have awarded.

First, some of the reduction in salary costs is balanced by the substantial terminal leave payments that accompanied the retirements, as well as by the increased overtime necessitated by the reduction in the number of firefighters. Second, there is no indication in the record that unit size will remain at this level indefinitely. The Regional has appealed the federal district court decision that enjoined it from hiring (2010 AFS, p. 27) but once the litigation is resolved, the logical inference is that selection criteria will be adjusted as necessary, thereby enabling recruitment to resume at some point.

In this posture, I have endeavored to arrive at an award that, to the extent consistent with the Regional's economic circumstances, will enable the Regional to retain a reasonably competitive compensation package.

With respect to the fiscal component of the public interest, the Regional differs from most employers that are involved in the interest arbitration process. It is a more limited-purpose entity than a municipality or a County; does not have taxation authority; and is not itself subject to the CAP laws. Nevertheless, it is indirectly subject to the same pressures as local governments in New Jersey because its funding is primarily derived from its constituent municipalities.

These contributions are detailed in my discussion of the financial impact criterion but, by way of illustration, the Regional had operating revenue of \$55,795,905 in 2010, the two largest components of which were \$54,782,399 in municipal contributions and \$701,712 in federal and other grants (2010 AFS, pp. 9, 49). While municipal contributions under the joint agreement have increased in recent years, municipalities such as North Bergen and Weehawken which support the Regional are struggling with sharp declines in State aid; increased pension and health care costs; a tightened tax levy CAP; and a rise in tax appeals.

The Regional's own financial documents show that it is well-managed. However, while it generated an operating surplus for 2007 through 2009, it ended 2010 with an operating deficit. It also still owes over \$800,000 in terminal leave payments for firefighters who retired between 2008 and 2011 (Exhibit R-18, p. 1;

Exhibit R-25).¹⁴ In addition, this is a unit with increment and related salary costs of \$315,010 in the first two years of the agreement. For years three and four, estimated costs for these items are the same. These costs must be considering in arriving at across-the-board rate increases.

Finally, another relevant factor is that the economy as a whole is still emerging from a deep recession and continues to be marked by high unemployment and a depressed housing market. These phenomena create a “perfect storm” in which the Regional and its members have less budgetary flexibility than in the past while, at the same time, financially stressed citizens are more sensitive to tax increases and more concerned that the local governments deliver public services at reasonable cost. The latter observations have particular force in Hudson County, where the unemployment rate as of June 2012 was 11.4% (NJLWD website, New Jersey Counties Unemployment Rates) and the median household income is below the New Jersey average.

The foregoing circumstances do not mean that the Regional is without resources or some budgetary flexibility. However, they do point to caution in awarding salary increases during this negotiations cycle, even though higher increases would be appropriate in a better economic climate.

¹⁴ The Regional’s total terminal leave obligation for 2008 through 2011 was \$1,141,434.61; \$1,060,728 of that amount is attributable to 2009 through 2011; and the Regional paid out \$233,713 during July 1, 2009 through June 30, 2011 (Exhibit R-18, p.1; R-25).

In that regard, the parties agree that the maximum firefighter base salary of \$79,424 (as of June 2009) is in the average range vis-à-vis firefighters in comparable northern New Jersey jurisdictions. As discussed more fully in the comparability analysis, this compensation is close to the top-step salary for police officers in Weehawken and North Bergen, and is within the range of the maximum police salary in Union City. Further, the North Hudson salary compares favorably with the average Hudson County private sector salary of \$65,699, as is appropriate given the training and critical responsibilities of these employees. On the other hand, the maximum firefighter salary is substantially less than the \$109,384.40 maximum salary for a North Hudson Fire Officer 1 (the lowest of the three superior officer ranks) (Association Binder 1, Tab 2, p. 54).

In arriving at across-the-board increases, I have given considerable weight to the budgetary circumstances of the Regional and its constituent municipalities. In a more typical negotiations cycle, I would be strongly inclined to award an increase for 2009-2010 that paralleled the 4% adjustment received by the North Hudson Fire Officers for that year. PERC decisions direct arbitrators to carefully consider internal settlements and fully articulate the rationale for any decision to deviate from them. *Union Cty.*, P.E.R.C. No. 2003-33, 28 *NJPER* 459 (¶33169 2002) and *Union Cty.*, P.E.R.C. No.2003-87, 29 *NJPER* 250 (¶75 2003). The principle underlying these decisions is that maintaining an established pattern of

settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. *Essex*.

Thus, a settlement involving the firefighters' own supervisors would ordinarily be entitled to great weight. Further, the settlements between the Regional's participating municipalities and their police officers units are also relevant, as they are akin to internal settlements within the meaning of *Union Cty*. As addressed in my comparability analysis, three of these units received 4% increases for 2009-2010; two groups received 4% adjustments for 2010-2011; and one negotiated a 4% raise for 2011-2012.

Despite this comparability data, a key element of my public interest analysis is that these are not ordinary times, and it is no longer feasible to award increases that mirror those negotiated in a more favorable economic and budgetary climate. Circumstances prevailing in the State and national economies as a whole, as well as the Regional's own budgetary pressures and those affecting its member municipalities, all militate against increases at the 3% to 4% level proposed by the Association. Moreover, recent salary data reflects a marked decline in the raises received by public safety employees statewide.

Thus, the average increase in interest arbitration awards issued during January 2012 through April 30, 2012 was 1.82%; while the figures for awards issued in 2011 and 2010 were 2.05% and 2.88%, respectively (PERC April 30,

2012 Salary Analysis). All of these statistics represents a decline from 2009, when the average increase in awards was 3.75%.

A similar trend is reflected in voluntary reported settlements. For January through April 2012, the average increase in such settlements was 1.83%, while for 2011 the figure was 1.87% and for 2010, 2.65% (PERC January 2012 Salary Analysis). For 2009, the average increase in voluntary reported settlements was 3.60%.

The awarded across-the-board rate increases of 2% for 2009-2010; 2.0% for 2010-2011; 1.5% for 2011-2012 and 1.0% for 2012-2013 reflect this changed negotiations landscape and result in an average annual rate increase of 1.625%. These increases will provide some very moderate enhancement of the firefighters' compensation package over the contract term.

The awarded increases are very close to those proposed by the Regional albeit they are differently configured. As addressed in more detail later in this opinion, I conclude that, within an annual budget of over \$55 million, the Regional has sufficient budgetary flexibility to fund awarded across-the-board increases that, including the flow through into 2013-2014, will cost \$77,448 more than the adjustments proposed by the Regional.

A final element that must be considered in connection with the public interest is the CAP established by *N.J.S.A. 40A:4-45.1a et seq.* As set forth in

more detail in the lawful authority discussion, no evidence has been presented that suggests that the award will cause any of the constituent municipalities to breach their statutory restrictions. Indeed, there is no evidence that the award cannot be funded with the contributions that will be automatically generated under the existing Joint Agreement.

Comparisons with Other Employees

N.J.S.A. 34:13A-16g(2) is a multi-pronged factor that calls for a comparison of the wages, hours, and working conditions of the employees involved in the proceeding with employees “performing similar services” and “employees generally” in (1) private employment in general; (2) public employment in general; and (3) public employment in the same or similar comparable jurisdictions. The record includes data on all of the above-noted categories of employees, some of it focusing on the percentage increases received by different groups and some of it detailing actual employee salaries and benefits. Overall, I have carefully considered all of this information and given the comparability criterion significant weight.

Both parties agree that the salaries for this unit are in the average range for firefighters in comparable jurisdictions. I agree with that assessment and find that some enhancements over the contract term are appropriate to ensure that salaries for this unit stay within that range and remain reasonably competitive. However,

fiscal considerations point toward lower across-the-board salary adjustments than might be awarded in a more favorable economic climate. Further, economic and budgetary conditions over the past few years have resulted in lower salary increases for public safety employees statewide, thereby providing further support for the increases awarded herein. The analysis that undergirds these conclusions is as follows.

Firefighters at the top step of the salary guide earned a base salary of \$79,424 as of June 30, 2009. This salary was augmented by holiday pay that, as of January 1, 2012, ranged from \$4,406 to \$5,176 annually for firefighters at maximum salary (Welz Certification, Attachment C). Holiday pay is calculated based on an hourly rate that includes longevity (Welz Certification, Attachment C).

In evaluating this dollar amount salary, it is essential to consider the compensation structure of firefighters and other public employees who perform the “same or similar services” in the “same or comparable jurisdictions.” *N.J.S.A.* 34:13A-16g(2). The Association focuses primarily on firefighters in Bayonne, Harrison, Jersey City, and Kearny as a comparison group and concludes that the unit’s salary is at the median point for this core cluster (Ab39). The Regional cites these municipalities plus several other northern New Jersey urban jurisdictions. It reaches a conclusion similar to the Association: salaries in North Hudson are in the average range for firefighters.

I have considered the Regional's more expansive list in arriving at across-the-board salary increases. The additional information provides a broader perspective on compensation for firefighters who work in densely populated northern New Jersey municipalities. It also allows for more comparisons for 2007 through 2009, and thus provides a better view of North Hudson's relative standing under the predecessor agreement.

Overall, as the following chart illustrates, the North Hudson June 30, 2009 salary of \$79,424 was in the mid-range, between the Bayonne 2009 salary of \$70,877 and the Kearny 2009 salary of \$91,782.

	2007	2008	2009
Bayonne	\$66,833	\$67,501	\$70,877
Elizabeth	\$71,456 (2004)		
Hoboken	\$82,211 (7/1/2006)		
Jersey City		\$83,666	\$85,967
New Brunswick	\$78,046	\$80,778	\$83,605
Newark			\$84,864
Paterson	\$79,890	\$82,686	\$85,580
Harrison	\$72,968	\$75,521	\$78,165
Kearny	\$86,095	\$88,893	\$91,782
Irvington	\$76,313	\$78,602	\$81,770
Montclair	\$77,088	\$80,172	\$81,371(12/31/2008)
West Orange	\$74,590	\$77,499	\$80,444
North Hudson	\$75,889	\$78,924	\$79,424 (6/30/2009)

[Exhibits R-83;R-88; R-89; Association Binder 2, Tab 9, Bayonne Memorandum of Agreement, and Tab 11, Bayonne Contract]

The holiday pay for this unit enhances the competitiveness of North Hudson's compensation package, especially since the holiday pay benefit was terminated and folded into base salary in Hoboken, Harrison and Kearny (Exhibit R-86, p. 17; Exhibit R-87, p.30; Exhibit R-90, p. 15). In some other municipalities (Paterson, Irvington, West Orange), it appears that employees receive compensatory time off in lieu of any holidays worked, but no additional holiday pay (Exhibit R-94, p.27; Exhibit R-88, p. 16; Exhibit R-95, p. 13).

The Association also urges consideration of the salary, benefits, and wage increases received by police officers in the Regional's constituent municipalities. I agree that such data is relevant and indicative of the compensation and benefit package that the Regional's members believe is warranted from a fiscal and comparability perspective. In that regard, this unit's compensation is on a par with the maximum 2009 patrol officer salaries in Weehawken (\$82,744) and North Bergen (\$76,375) with both figures including holiday pay (Association Binder 1, Tab 10, Weehawken contract, pp. 14 & 70; North Bergen contract, Tab 11, p. 20). By contrast, the maximum police officer salary in Union City (\$87,927 in 2009) is higher than that earned by North Hudson firefighters, albeit it also includes holiday pay (Association Binder 1, Tab 9, Union City contract, pp. 34 & 65-68).

With respect to private employees, firefighter salaries are higher than the average 2009 private sector wage in Hudson County (\$65,699) (NJLWD Private

Sector Wage Report). That circumstance is to be expected given the extensive training and critical responsibilities of unit members, as well as the fact that the \$65,699 figure represents an averaging of several more highly-paid sectors (utilities, construction, manufacturing, wholesale trade, finance, real estate, information, and management), with several lower paid categories such as retail trade, education, accommodation/ food services, and arts/recreation.

Within this framework, I must determine the appropriate across-the-board salary increases for the July 1, 2009 through June 30, 2013. In a more typical negotiations cycle I would be strongly inclined to award increases that more closely parallel those received by the Regional's own fire officers and the rank-and-file police officers in the Regional's constituent municipalities. Those settlements were as follows:

	Contract Term	July 1, 2009	July 1, 2010	July 1, 2011	Settlement Date
Fire Officers	7/1/2004-6/30/2010	4%			
Weehawken	7/1/2006-6/30/2010	4%			2/22/2008
Union City	1/1/2008-12/31/2012	4%	4%	4%	
North Bergen	1/1/2008-12/31/2011	4%	4%		5/12/2009
[Association Binder 1, Tab 2, p. 56]					

PERC decisions direct arbitrators to carefully consider internal settlements and internal settlement patterns and to fully articulate the rationale for any decision to deviate from them. *Union Cty.*, P.E.R.C. No. 2003-33; *Union Cty.*, P.E.R.C.

No.2003-87. This principle is applicable to the Fire Officer settlement and, arguably to the Weehawken, Union City, and North Bergen agreements as well. Accordingly, I have carefully considered these settlements. However, all of the agreements were negotiated in a significantly different legislative and budgetary environment than that which currently pertains. While there is some overlap between the terms of the fire officer and police contracts and the agreement awarded here, the municipal agreements have a 2006 or 2008 start date and the fire officer agreement commenced in 2004.

In this regard, Pianese recalled that preparations for, and negotiations over, the 2008-2011 North Bergen agreement took place during 2007, when the negotiations landscape was “totally different.” Pianese recounted that municipalities at that time were not struggling with State aid cuts and a 2% tax levy CAP.

In sum, all of the settlements, particularly that involving the fire officers, were reached before the Regional and local governments began to feel the full impact of the recession, State aid cuts, and new CAP legislation. These recent developments militate against following the fire officer or police settlements.

Compare Union Cty.

As discussed throughout this opinion, increases at the 4% or 3% level are inconsistent with the current budgetary circumstances of the Regional and its

participating municipalities. They also are not warranted in light of the broader economic picture of high unemployment and declining State aid. Moreover, the record reflects a trend away from increases at this level.

The first year of this awarded contract spans the second half of 2009 and the first half of 2010, and the final year extends from July 1, 2012 through June 30, 2013. Accordingly, data for calendar years 2009 through 2012 and 2013 is pertinent. With respect to public safety employees statewide, PERC's Salary Analysis reflects a clear downward trend in the average increase included in interest arbitration awards and settlements. The following figures indicate the average raises set forth in awards issued, or settlements reached, during the year in question.

	Awards	Settlements
2009	3.75%	3.60%
2010	2.88%	2.65%
2011	2.05%	1.87%
2012 (1/1/12-4/30/12)	1.82%	1.83%

PERC's Salary analysis also observes that, for post-2011 filings, some of these awards and settlements included deferred increases; zero increases; increases at the top step only; various adjustments to salary guides; and no retroactive increases.

Turning to non-uniformed public and private sector workers in New Jersey, NJLWD reports generally show increases, for 2009 and 2010, that are below the 3% and 4 % levels sought by the Association.

	2009	2010
Private Sector – N.J.	-.07%	2.2%
Private Sector – Hudson County	-1.8%	5.7%
Federal, State & Local Government Employees in N.J.	2.2%	2.2%

[NJLWD Private Sector Wage Reports, August 2010 and August 2011]

Within this context, I have decided to award across-the-board rate increases of 2% effective January 1, 2010; 2% effective January 1, 2011; 1.5% effective January 1, 2012; and 1.0% for the final year of the agreement, effective January 1, 2013. These adjustments will enable this unit's top-step salary to remain reasonably competitive with those of firefighters in comparable jurisdictions.

The following chart illustrates how a maximum firefighter's salary on July 1, 2009 through July 1, 2012 will compare with those in the following jurisdictions.

	2009	2010	2011	2012
Bayonne	\$70,877	\$73,740	\$76,720	
Elizabeth				
Hoboken				
Jersey City	\$85,967	\$88,331	\$90,760	\$93,256
New Brunswick	\$83,605	\$85,695		
Newark	\$84,864	\$86,985	\$89,377	\$92,059.27
Paterson	\$85,580			
<i>Harrison*</i>	\$78,165	\$80,900	\$83,530	

<i>Kearny*</i>	\$91,782	\$94,765	\$98,823	
Irvington	\$81,770	\$85,065	\$88,923	
Montclair				
West Orange	\$80,444			
North Hudson	\$81,012	\$82,633	\$83,872	\$84,711

*Holiday pay was terminated and included in the stated salary figures.

[Exhibits R-83; R-88; R-89; Association Binder 2, Tab 6, Bayonne Memorandum of Agreement, and Tab 10, Bayonne Contract]

With respect to the core group of jurisdictions that the Association highlights, the maximum salary for North Hudson will continue to be higher than that in Bayonne and close to the salary in Harrison. On the other hand, salaries will lag well behind those in Kearny and Jersey City, as they did under the predecessor agreement.

In a more favorable economic environment I would have awarded increases for the first two contract years close to those received by the fire officers and the police officers in Weehawken, North Bergen, and Union City. Those settlements constitute strong internal comparability evidence that would ordinarily have been entitled to greater weight. Such increases would have brought this unit's maximum salary closer to those of their colleagues in Jersey City, Kearny, and Newark. However, adjustments at this level are not warranted in light of the Regional's budgetary circumstances and the economic forces affecting its residents.

Moreover, while the awarded increases are lower than the average increases included in recent interest arbitration awards and settlements, they are consistent with the developments that will unfold once the new interest arbitration statute is fully implemented. For all contracts expiring between January 1, 2011 and April 1, 2014, *L. 2010, c. 105* prohibits an arbitrator from rendering an award that increases base salary on an annual basis by more than 2%. Base salary is defined as “the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service.”

These provisions should result in a downward pressure on awarded increases. Settlements should also trend lower, since negotiations will be conducted within the framework of the amended interest arbitration statute. In this environment, I believe the Regional’s compensation package will remain competitive.

Overall Compensation

The overall compensation criterion, *N.J.S.A.34:13A-16g(3)*, requires the arbitrator to consider all the economic benefits received by the employees involved in the proceeding, including direct wages, vacations, holidays, excused leaves, insurance, pensions and medical benefits. This criterion thus directs a focus on all employee benefits, not just the items that are at issue in the proceeding.

Viewed from this perspective, unit members enjoy a comprehensive compensation and benefit package that includes vacation, longevity, sick leave, personal days, terminal leave, and full health benefits coverage. As discussed later in this opinion, the unit's current benefit levels—for those firefighters hired on or after regionalization—are mostly in the average to low-average range.

I have also considered that unit members' contractual benefits package has unquestionably been diminished by both Chapter 2 and the more recently enacted Chapter 78. The latter statute raises the employee's PFRS contribution from 8.5% to 10% of base salary and both enactments mandate employee health benefit contributions. These health benefit changes will eventually apply to all New Jersey public employees, while the pension changes will be effectuated for all public safety workers. In this posture, the legislative changes will not materially affect unit members' overall compensation vis-à-vis other public sector employees in New Jersey.

Within this framework, the overall compensation criterion does not factor significantly into my assessment of the parties' salary proposals. However, as discussed *infra*, the bulk of the Regional's "giveback" proposals are not warranted in view of North Hudson's existing compensation and benefit package.

Stipulations

N.J.S.A. 34:13A-16g(4) requires the arbitrators to consider the stipulations of the parties. There are no formal stipulations that pertain to the issues involved in this interest arbitration.

Lawful Authority of the Employer; Statutory Restrictions on the Employer

N.J.S.A. 34:13A-16g(1) and (5) mandate consideration of the lawful authority of the employer, including the expenditure limitations imposed on a municipality by *N.J.S.A.* 40A:4-45.1a *et seq.*, commonly known as the appropriations CAP law or 1977 law. *N.J.S.A.* 34:13A-16(g)(9), similarly directs an analysis of the statutory restrictions imposed on the employer, including specifically the new tax levy cap enacted in 2007 and amended in 2010. *See L. 2007 c. 62*, codified at *N.J.S.A.* 40A:4-45.44 through 45.47; *see also L. 2010, c. 44*. Both CAPs were designed to help control the costs of local government and limit increases in the local property tax.

As adverted to in the background and public interest sections of this opinion, the Regional does not have taxation authority and is not itself subject to the expenditure and tax levy CAPs. However, since by far the largest source of its revenue is derived from municipal contributions from its members, the Regional is deeply affected by the budgetary constraints imposed on those entities, including

the fact that the tax levy CAP was reduced from 4% to 2% beginning January 1, 2011 for jurisdictions under a calendar year budget system.

In arriving at salary increases for the July 1, 2009 through June 30, 2013 contract term, I have been mindful of the CAP limitations that govern the Regional's constituent municipalities. In that regard, there is no particularized evidence in the record to show that salary increases that exceed the Regional's offer by \$77,448 will cause any of the five constituent municipalities to breach the restrictions imposed on them. Nor has the Regional shown that salary increases that are \$977,173 less than those sought by the Association will require municipal contributions in excess of those that will be generated under the existing Joint Meeting agreement.

Financial Impact of the Award

N.J.S.A. 34:13A-16g(6) requires an arbitrator to consider the financial impact of an award on the governing unit, its residents and taxpayers. As such, the factor has a strong overlap with the fiscal component of the public interest and with *N.J.S.A.* 34:13A-16g(5) and *N.J.S.A.* 34:13A-16g(9), which mandate a consideration of the legal limits of a jurisdiction's taxation authority. However, the financial impact criterion directs a broader inquiry than 16g(5) and (9). The legal ability to raise a certain amount by taxation does not automatically signify that such a levy would be reasonable in view of the entity's overall financial

picture, including such factors as its ratable base, existing tax levels, and the income of its residents. The financial impact criterion requires such an assessment and also directs an arbitrator to consider “to the extent evidence is submitted,” the impact of an award on an employer’s ability to initiate, expand, or maintain programs and services.

This proceeding differs from most interest arbitrations, because the Regional as an entity does not have taxation authority and is not itself bound by the tax levy and expenditure CAPs. Nevertheless, the Regional’s underlying budgetary dynamics are fundamentally the same as those of other public employers. The Regional is overwhelmingly funded by contributions from its participating municipalities, and those entities are subject to the same pressures and CAP restrictions that pertain to local units throughout New Jersey.

I have given *N.J.S.A.* 34:13A-16g(6) substantial weight in awarding across-the-board rate increases salary increases that are very close to those proposed by the Regional. The awarded increases are below those sought by the Association and, further, reflect a changed negotiations landscape for public safety employees statewide. I also conclude that my award will not have an adverse financial impact on the Regional, its constituent municipalities, or its residents and taxpayers.

Overall, the record shows that the Regional is well managed and has some budgetary flexibility. However, there is also no question but that it has experienced some financial challenges in the past few years, including significant increases in several components of the firefighter compensation package; substantial terminal leave liabilities; and an operating deficit for 2010. These circumstances, coupled with the fiscal constraints experienced by the member municipalities, weigh strongly in favor of very moderate increases.

Municipal contributions under the Joint Meeting agreement have escalated since 2006, and the basic contributions are supplemented by municipal lease contributions. The latter obligations derive from the fact that, when the Regional was established, various capital assets were sold by the municipalities to the Hudson County Improvement Authority (HCIA), which in turned leased them back to the Regional. The municipalities also contribute toward the North Hudson Regional Communication Center (NHRCC), which was established in 2007. These assessments are reflected in the following chart.

Year Ended	Municipal Contribution	Municipal Lease Contributions	Municipal NHRCC Contribution
2010	\$49,890,729.33	\$4,012,215.67	\$879,455.00
2009	\$48,646,620.38	\$3,851,082.58	\$980,557.94
2008	\$46,329,677.07	\$3,982,842.65	\$980,557.90
2007	\$43,914,384.98	\$3,726,085.16	\$1,110,712.52
2006	\$38,040,980.78	\$2,441,872.88	_____

[2010 AFS, p. 63]

Compared to these revenue sources, supplemental grant funding from the State or federal governments is comparatively minor: \$572,763.55 in 2008; \$66,095 in 2009; and \$701,712 in 2010 (2010 AFS, p. 63). In 2006 and 2007, by contrast, grants totaled \$2,173,567.87 in each year. In 2006 and 2007, the Regional also earned interest income of \$533,694.76 and \$470,324.24, respectively. That revenue plummeted to \$9,866.65 in 2009 and \$5,431.87 in 2010. Finally, miscellaneous non-budgeted revenue has been a small budgetary component throughout the last several years: \$19,558 in 2007; \$7,478 in 2008; \$5,445 in 2009, and \$7,761.65 in 2010 (2009 AFS, p. 9; 2010 AFS, p. 9). Total miscellaneous revenue was \$7,761.65 in 2010 and \$162,566.91 in 2009 (2010 AFS, p. 63).

In three of the five years between 2006 and 2010, the Regional generated operating income in excess of operating expenses: \$2,390,476 in 2009; \$2,198.667 in 2008; and \$2,919,193 in 2007 (AFS 2010 and 2009, p. 9). The Regional's budgetary framework enabled it to include, as revenue in the 2007 through 2010 budgets, the following amounts from cancelled appropriations and reserves.

2007	\$514,436.76
2008	\$1,561,495.32
2009	\$68,833.87
2010	\$1,005,743.35

[2010 AFS, p. 63]

In 2010, however, the Regional ended the year with an operating deficit of \$93,770.34. The Regional also incurred an operating deficit (of \$720,525.66) in 2006 (AFS 2008, p. 9).

The record also shows that pension contributions attributable to this unit increased from \$3,621,085.50 in 2009 to \$8,136,977.20 in 2011 (Exhibit R-14). Similarly, health benefits premiums rose from \$4,773,502.21 to a projected \$6,055,760.40 in the same time period (Exhibit R-14). Further, the Regional has a significant terminal leave liability triggered by what the union characterizes as massive retirements between 2008 and 2011. The Regional paid \$233,713.98 in terminal leave benefits between July 1, 2009 and June 30, 2011, but still owes \$827,015 in additional payments to retirees who left the Regional between 2009 and 2011 (Exhibit R-18; R-25). As noted, the Regional has exercised its statutory authority to pay these obligations over a five-year period.

Finally, during the first two years of this contract, the Regional has incurred significant increment and related salary costs for this unit. I have estimated that it will do so for the third and fourth contract years as well. While the Regional does not propose to change the existing salary guide structure and has paid these increments and other salary items, those costs must nevertheless be considered in assessing the financial impact of the award. On balance, all of these factors weigh in favor of very moderate salary increases.

While I recognize that total firefighter salaries decreased between 2009 and 2011, that reduction is largely attributable to retirements and the Regional's legal inability to hire new firefighters. The salary decreases are counterbalanced in part by terminal leave obligations and increased overtime and, as discussed in the public interest analysis, there is no indication that the reduction in unit size is intended to be permanent. The retirements thus do not provide a basis for awarding a richer compensation package than would otherwise be appropriate.

In addition to the Regional's financial circumstances, the conditions prevailing in the member municipalities also point toward very moderate increases. Pianese and Turner vividly described how North Bergen and Weehawken have each experienced increases in tax appeals; reduced property tax revenues; and declines in State aid, including a reduction in Urban Enterprise Zone (UEZ) funding, which was eliminated from the State budget as of July 1, 2011 (Exhibit R-42). Mayor Turner recounted how Weehawken has reduced appropriations for the police, construction, parks, and public works departments, and Pianese stated that North Bergen's police force now numbers 105, down from a high of 125. Pianese also underscored that the Regional's expenses impact all of the municipalities, which are struggling with their own budgets.

Finally, the record demonstrates that the Hudson County region is marked by poverty and unemployment rates that are higher than the State average. As of

June 2012, preliminary figures set the County's unemployment rate as 11.4%, above the State average of 9.6% (NJLWD website, N.J. Counties Unemployment Rates; Economy at a Glance). In September 2010, the Hudson County rate was 11.6%, and in 2009, the Regional's constituent municipalities had rates ranging from 8.7% in Weehawken to 14.1% in Union City (Exhibits R-7; R-35). These unemployment rates have been linked to high levels of poverty and a lack of higher education among County residents (Exhibit R-36). Per capita personal income in Hudson County was \$43,446 as of 2008, compared to a State average of \$51,473 (NJLWD, Hudson County Information Sheet). In 2009, 14.5% of County residents were below the poverty level, compared to 9.4% in New Jersey as a whole (NJLWD, Hudson County Information Sheet).

Against this backdrop, I have given substantial weight to the financial impact criterion and awarded across-the-board rate increases of: 2% effective January 1, 2010; 2% effective January 1, 2011; 1.5% effective January 1, 2012; and 1% effective January 1, 2013. These rate increases total 6.5% over the contract term—one-half percent more than proposed by the Regional. Overall, the rate increases attributable to the award will cost \$77,448 more than those proposed by the Regional and \$977,173 less than the adjustments sought by the Association. I conclude that the award represents a reasonable determination of the salary issue

and will not negatively affect the Regional; its constituent municipalities; or the residents and taxpayers it serves.

For 2009-2010, the cost of the awarded across-the-board increase, with the delayed effective date of January 1, 2010, is \$140,000. While the Regional seeks the same 2% rate increase for 2009-2010, its proposed June 2010 implementation date would generate essentially no payout in the 2009-2010 contract year. In addition, during the 2009-2010 contract year, the Regional paid \$128,059 in increments and related salary items.

The foregoing costs must be evaluated in the context of total operating revenue of \$53,775,756 in 2009 and \$55,795,905 in 2010. In this regard, while it is not my role to direct how the Regional should fund the award, *see County of Essex*, citing *New Jersey State PBA, Local 29 v. Irvington*, 80 N.J. 271, 293 (1970), it is reasonable to surmise that the difference between the award and the Regional's offer can be accommodated within the framework of the 2009 and 2010 budgets. *Compare Essex* (because settlements and awards do not always coincide with adopted budgets, the planning process for salary increases includes budgeting for reserves and contingencies within the current operating fund).

A similar analysis pertains for the remaining three years of the contract term. For 2010-2011, the cost of the awarded across-the-board increase is \$282,800, virtually identical to the \$280,000 that would flow from the Regional's offer.

Again, increment and related costs of \$186,951 have been paid. In addition, during this 2010-2011 time period, the Regional received \$210,000 in employee health benefits contributions that it would otherwise have had to absorb.

For 2011-2012 the payout required under the award (\$252,399) is \$176,001 less than that which would be remitted under the Regional's offer (\$428,400) due to the fact that the employer-proposed 2% rate increase for 2010-2011 would be fully implemented in 2011-2012, and the Regional's proposed 1% rate increase for the third contract year would also take effect as of July 1, 2011.

Finally, in the last year of the contract, July 1, 2012 to June 30, 2013, the cost of the awarded across-the-board rate increase (\$183,440) is \$36,356 more than under the Regional's offer (\$147,084). I have estimated increment and other additional salary costs of \$157,505 for both 2011-2012 and 2012-2013.

Again, it is reasonable to surmise that the Regional will have the budgetary flexibility to accommodate these across-the-board rate increases, which are very close to those proposed by the employer and which, because they are effective January 1 of 2010 through 2013, will have less of an impact than would raises that were implemented as of the prior July 1. It is also reasonable to conclude that the Regional's annual budget of over \$57 million (\$57,265,285 for calendar year 2011) can absorb the increment and related salary costs under the existing salary guide structure (Exhibit R-14). The Regional has been paying increments and related

salary costs since the contract expired and it does not seek to freeze step movement; alter the current guide structure; or change the longevity schedule for current employees. Thus, increment and other costs vary very little from what they would be under the Regional's offer.¹⁵

In evaluating these costs, it is also worth observing that in both 2011-2012 and 2012-2013, the Regional will obtain some enhanced budgetary flexibility from the health benefits contributions required by Chapter 78. Pursuant to this statute, officers with family medical and prescription coverage will pay more per year in health benefits contributions than they would under Chapter 2.

One final point requires discussion under this criterion, and that is the issue of retroactive payments due under the award. The employer proposes to remit any such amounts in three installments: the first within 60 days of the award; the second within 30 days of the one year anniversary of that date; and the third within 30 days of the two year anniversary of the first payment. This proposal is not warranted in the circumstances of this case.

First, it is reasonable to expect that an employer will plan for possible retroactive payments under an interest arbitration award. *Essex*. This type of planning process includes budgeting for reserves or contingencies. *Essex*. Second, this is not an instance where the amounts owed are greater than could have been

¹⁵ The deviation derives from the fact that the rate increases affect step increments and longevity, and the award including a 1.5% rate increase for all steps for 2011-2012, compared to the 1.0% increase proposed by the Regional.

anticipated. Finally, much of the contract term has already elapsed, and this circumstance weighs in favor of making all increases retroactive to their effective dates. Under the employer's proposal, final retroactive payments would not occur until September or October 2014, well after the expiration of the contract term.

In light of the foregoing, I believe that the very moderate increases awarded represent a reasonable determination of the salary dispute and will not have a negative effect on the employer; the Regional's constituent municipalities; or the residents and taxpayers served by the Regional.

Cost of Living

N.J.S.A. 34:13A-16g(7) mandates consideration of the cost of living, which is typically measured by the Consumer Price Index for all Urban Consumers (CPI-U) published by the federal BLS. The Regional has submitted a BLS news release dated September 15, 2011 (Exhibit R-25), and I have updated that information with more recent BLS data.

Exhibit R-25 indicates that the CPI-U increased 3.8% between August 2010 and August 2011. BLS Tables for the CPI-U show annual December to December percentage changes of 2.7% for 2009; 1.5% for 2010; and 3.0% for 2011. These figures average of 2.4% over this three-year period. The BLS states that these December-to-December changes represent the most recent estimate of price

changes, although it also comments that the December-to-December index is more volatile than the average annual index.

This average annual index is based on 12 monthly data points which, when averaged, reduce volatility by smoothing out the highs and lows (www.bls.gov (FAQs)). This index shows changes of -0.4% for 2009; 1.6% for 2010; and 3.2% for 2011, or an annual average of 1.46% for this three year period.

On balance, I have given the cost of living criterion some weight in arriving at an award that includes an average annual across-the-board rate increase of 1.625%. The cost of living, standing alone, might point to higher across-the-board increases than I have awarded. However, I have given greater weight to criteria pertaining to the public interest, comparisons with other employees, financial impact, and the continuity and stability of employment. These factors together weigh in favor of the salary increases that I have awarded. In addition, in applying the cost of living criterion to this proceeding, it must be recalled that the CPI-U includes increases in medical costs which, even under recent legislation, are still borne largely by the Regional.

Continuity and Stability of Employment

N.J.S.A. 34:13A-16g(8) directs a consideration of the continuity and stability of employment, including seniority rights and other factors ordinarily and traditionally considered in determining wages and employment conditions in

public and private sector negotiations. This factor incorporates two concepts that have been discussed at other points in this award. The first is the desirability of providing for a competitive compensation package that will prevent excessive turnover, thus maintaining “continuity and stability in employment.” The second is the importance of considering internal settlements, since unwarranted deviation from such settlements can undermine morale, discourage future settlements, and affect labor relations stability within a jurisdiction.

As the Association acknowledges, unit members do not typically leave North Hudson for employment in municipal fire departments. This reality supports the conclusion that the compensation package under the predecessor agreement was satisfactory. The awarded increases, together with my decision not to award the Regional’s proposals to reduce many categories of benefits, will likely maintain the competitiveness of this unit’s compensation package and thus the continuity and stability of employment in this unit. This is especially so because, in this difficult labor market, where municipalities have laid off police and fire employees, it is not likely that officers will leave their current positions in the short term (Exhibits R-39 & 40; Exhibits R-44 through R-51). For the same reasons, recruitment should not present a problem if and when the Regional is able to resume hiring.

However, in a more favorable economic environment this criterion, as well as comparability considerations, would likely have prompted me to award higher increases. The awarded increase for 2009-2010 is 2% less than that received by the firefighters' own supervisors, and this strong comparability evidence would ordinarily have supported 4% increases for this unit as well. In addition, North Bergen, Weehawken and Union City each agreed to 4% increases for their rank-and-file police units for time periods that coincide with the awarded contract term (Association Binder 1, Tab 2, p. 56). This comparability data would also typically support increases in a similar range.

However, as noted earlier, all of these settlements were negotiated in a significantly different legislative and budgetary environment than that which currently pertains. Moreover, while departure from internal agreements can discourage future settlements and undermine labor relations stability, that principle has much less salience when, as here, economic conditions have changed so substantially from when the employer negotiated the contracts in question.

Overall, I conclude that the continuity of stability and employment will not be jeopardized by the awarded increases. At the same time, I have also determined that the Regional's various proposals to reduce benefits could well jeopardize the morale of this dedicated group of firefighters. Those proposed

benefit reductions, along with a range of other issues, are addressed in the remaining portions of this decision and award.

OTHER ECONOMIC AND NON-ECONOMIC PROPOSALS

The foregoing discussion of the statutory factors informs my analysis of the other unresolved issues and yields two guiding principles with respect to the parties' economic proposals. First, in view of the budgetary constraints discussed in connection with the financial impact and public interest criteria, I have allocated any economic enhancements to this unit's compensation package to across-the-board salary increases. Accordingly, I have declined to award those Association proposals that would impose additional costs on the Regional.

Second, when the awarded salary increases are taken into account, the public interest in maintaining a competitive compensation package militates against the Regional's proposed reductions in existing economic benefits for either new hires or current unit members. There are two exceptions to this conclusion. The first is in the area of vacation scheduling, where I have awarded the Regional's proposal to reduce the number of firefighters who can be on vacation at any one time. The second pertains to health benefits, where I have awarded a provision stating that the health benefits of future retirees may be modified in the same manner as active employees.

Regional Proposals on Longevity, Vacation Days, Sick Leave, Holiday Pay, Clothing Allowance and Education Incentive

Longevity

The Regional seeks to lower the longevity and holiday pay benefit for new hires and reduce the number of sick and vacation days that they would receive. It also proposes to eliminate the clothing allowance and educational incentive for current unit members, and to reduce their vacation time as well. The Regional writes that these and other measures are designed to sustain its fiscal stability during a time when most municipalities are resorting to layoffs and furloughs. The Regional also argues that because North Hudson firefighters already receive average or above-average benefits, implementation of the noted proposals will not negatively affect unit members.

The Regional's own exhibits show that most of the benefits it seeks to reduce are in the average range vis-à-vis firefighters in comparable jurisdictions (and police officers in the participating municipalities). In the context of the award as a whole, where I have awarded very moderate across-the-board rate increases, I conclude that the Regional has not met its burden of justifying these proposals. This is particularly so when the proposals are viewed in the aggregate: the award of the Regional's offer with respect to a broad range of benefits would erode this unit's benefit structure for new hires and could well impair its ability to recruit new firefighters.

I turn first to the Regional's longevity proposal. The longevity benefit is an integral part of this unit's compensation package and, indeed, is one component of overall salary. For new hires, the Regional seeks to implement a longevity schedule that begins after completion of nine years of service and has a maximum benefit of 6% of base salary.

Exhibit R-74 shows that among the Regional's core comparison group of 12 municipalities, all but Kearny offers a longevity benefit to their firefighters. Kearny is also exceptional in that the top-step firefighter salary for 2011 is \$98,823, well above that in all other jurisdictions.

The Regional's longevity exhibits also show that the first longevity plateau in the twelve locales ranges from 1.5% of base pay in Montclair to 2% to 4% of base pay in all other municipalities. The maximum benefit varies from 7.5% to 18% of base pay and vests at between twenty and thirty years of service.

For North Hudson firefighters hired on or after the regionalization, the initial 2% benefit is at the low end of the spectrum and begins after the completion of five years with the department, a commencement point shared with several other departments. The maximum longevity benefit of 9% is earned after twenty-three years and is lower than the maximum percentage in all but one municipality, Montclair (7.5%).

Thus, the longevity program for firefighters hired on or after regionalization is within the range of that received by firefighters in comparable jurisdictions, but at the low end of the spectrum. It is also similar to the longevity benefit for North Bergen police officers (10% after 24 years for officers hired after March 1994) (Association Binder 1, Tab 11, p. 21), but less that received by police officers in Union City (21% after 23 years) and Weehawken (12% after 22 years (Association Binder 1, Tab 9, p. 26; Tab 10, p. 23).

Given that salaries for this unit are also in the average range, the Regional's proposed diminution of longevity for new hires would, contrary to the public interest, erode the overall compensation package for this unit, particularly in light of the very moderate across-the-board rate increases that I have awarded.

In so holding, I am aware that unit members who were previously employed by one of the constituent municipalities are entitled to a maximum longevity benefit of 14% (or more if they had attained a longevity percentage above 14% under one of the municipal agreements). However, the longevity provisions for former municipal firefighters do not provide a justification for decreasing the benefit for new hires to a level below that prevailing in all comparable jurisdictions. This is especially so given that I have weighed and considered increment and longevity costs for the entire unit in arriving at a salary award that includes an average annual across-the-board rate increase of 1.625%.

Holiday Pay

I also find that the Regional's has not met its burden of justifying its proposal to decrease holiday pay for new hires from 112 hours per annum to 80 hours. This is a difficult benefit to compare across municipalities because some contracts have folded holiday pay into base salary; others do not mention the benefit; and a third category appears to afford firefighters paid days off in lieu of holidays. Some jurisdictions also have a separate monetary benefit as in North Hudson. However, the key point is that reduction of this benefit for new hires is not justified in light of the unit's existing salary levels and the very moderate across-the-board rate increases that I have awarded.

Vacation Days

A similar analysis pertains to the Regional's proposals concerning vacation days. With respect to vacation time, the Regional urges that firefighters already have sufficient time off because, as a function of their 24/72 work schedule, unit members have three days off before and after each day worked. The Regional maintains that its vacation proposals are essential from a cost-saving perspective, because vacation time contributes heavily towards the cost of overtime.

Vacation is unquestionably an economic cost item to the employer and an economic benefit to employees. However, it also has a strong bearing on employee health and well being and is particularly important for firefighters, who

have stressful and physically rigorous job duties. In that regard, the “72-hour” portion of the 24/72 work schedule is designed in part to help unit members recoup from being on duty for 24 hours.

The predecessor contract affords firefighters five, eight, ten, or twelve twenty-four hour vacation days depending on their years of service.¹⁶ This benefit compares well with the vacation time enjoyed by firefighters in comparable jurisdictions that also operate on a 24/72 schedule.

Firefighters in at least three of these departments have a higher maximum benefit, as well as more days at other service plateaus: Hoboken (17 days); Jersey City (15 days); and Paterson (16 days). Several other departments have a lower maximum vacation benefit than North Hudson: Harrison (7.5 days); Elizabeth (10.5 days); Newark (10 days); West Orange (8 days) and Kearny (8 days) (Exhibit R-69). While Exhibit R-69 lists Irvington and Montclair as having 18 and 20 days, respectively, a review of the contracts in these locales indicates that two vacation days must be taken for each 24-hour tour. Bayonne and New Brunswick are similarly listed as affording firefighters a maximum benefit of 24 and 16.5 vacation days, but it is not clear from the record whether those figures represent 24-hour days.

¹⁶ For those firefighters working an eight-hour day, the benefit ranges from 12 to 24 vacation days.

Against this backdrop, the Regional proposes to reduce the vacation entitlement of firefighters with one to five years of service from five days to four. For all other benefit levels, it seeks to eliminate two vacation days, resulting in a maximum benefit of 10 days. For new hires, the Regional proposes further reductions, changing the maximum benefit to eight days and reducing the other benefit levels.

The Regional has not met its burden of justifying these changes. North Hudson firefighters have a vacation benefit in the high average range. Given the unit's salary; overall compensation package; and the very moderate across-the-board rate increases that I have awarded, comparability considerations do not warrant a reduction in this benefit.

Nor has the Regional justified the proposal from a cost perspective. Preliminarily, the Regional has not made a particularized showing that the spikes in overtime costs are attributable to the number of vacation days that firefighters enjoy. In any case, my award of the Regional's proposal concerning the number of firefighters who can be on vacation during the summer, on holidays, and at other times, will help contain overtime without reducing the vacation benefit.

Sick Leave and Injury Leave

The Regional seeks to reduce sick leave for new hires, reasoning that because North Hudson firefighters now have an above-average benefit, its proposal

is reasonable. The Regional posits that new employees would be credited with 2.5 sick days per year for their first fifteen years of employment, compared to five days under the predecessor contract. Firefighters with more than 15 years with the Regional would receive five days annually, compared with 10 under the 2004-2009 agreement.

The Regional has not met its burden of justifying this proposal. Exhibit R-60 reflects that four of the jurisdictions for which information is available allow firefighters up to one year of paid sick leave. The Regional does not factor those municipalities into its calculations of average sick leave benefits. Moreover, of the four other locales addressed in Exhibit R-60, one provides employees with fifteen sick days per year; two afford employees 7.5 days per year; and a fourth provides firefighters with six sick days annually. The Regional's proposal would result in an annual sick leave benefit below all of these departments, thereby eroding this unit's compensation package for new hires. The public interest militates against this outcome.

Similarly, Article 16, Injury Leave, now states that a firefighter injured in the line of duty shall be entitled to full pay during the period in which he is unable to perform his duties, for a time frame that "will typically not exceed one year." The Regional seeks to change this Article to state that statutory compensation under the Worker's Compensation Act "is recognized as controlling" and will not

exceed 70% of the worker's weekly wages at the time of injury, except as provided by law. If not awarded for current employees, the Regional asks that the change be directed for new hires.

The Regional states that this proposal would save it money, but it offers no specifics about the costs or problems engendered by the current provision.

Firefighters have a very dangerous job and, without a more detailed presentation, I will not presume that they should be governed by the same standards that pertain to the typical worker in a non-hazardous occupation.

Clothing Allowance; Parking Fees; Educational Incentive

The Regional proposes to eliminate, for new hires and current employees, the annual \$650 clothing allowance and annual education incentive payments of \$1,000 or \$1,500 for an Associate Degree and \$2,000 or \$2,500 for a B.A. degree.¹⁷

The clothing allowance for this unit is equal to or lower than that in ten other jurisdictions that have the benefit, and in this context I decline to award the requested change (Exhibit R-80). While the education incentive appears more generous than that offered by many fire departments, it is but one element of an overall compensation package that has less favorable salary and longevity levels than those pertaining in many comparable jurisdictions. The Regional also does

¹⁷ The higher stipends are for degrees in fire science or technology.

not indicate how many firefighters qualify for the education incentive. In this posture I decline to eliminate a provision that encourages unit members to further their education.

Finally, the Regional seeks the deletion of a provision stating that when any governmental agency requires the payment of a parking fee, the parties shall “immediately negotiate over the payment of parking fees upon demand.” This clause does not impose any costs in and of itself. Absent an articulated rationale for the change, I do not award the Regional’s proposal.

Regional’s Terminal Leave Proposal

The Regional forcefully argues, and financial documents show, that firefighter retirements in recent years have triggered substantial terminal leave payments. Those costs are among the several factors that I have considered in awarding very moderate across-the-board rate increases. The Regional also argues that its large terminal leave obligations warrant award of its proposal to change existing contractual provisions concerning the calculation and payment of terminal leave.

As it now stands, Article 26.A of the 2004-2009 agreement states that all unused accumulated sick and vacation leave days shall be put into a terminal leave bank. The article then specifies that an employee shall only be paid for the purpose of terminal leave in accordance with the caps and rate systems set forth in

the remainder of the article. Article 26.B and 26.C go on to distinguish between firefighters formerly employed by one of the constituent municipalities and firefighters hired on or after regionalization.

For the latter group, Article 26.C specifies that firefighters shall, upon retirement, “receive payment for unused accumulated sick leave and vacation days up to a maximum of \$120 per twenty-four (24) hour day up to a maximum benefit of \$15,000”. By contrast, Article 26.B provides that former municipal firefighters “shall receive payment for eligible days as provided in the municipalities’ collective bargaining agreements which employed that Employee at the time of Regionalization.” Article 26.B continues that terminal leave benefits for such employees shall be based upon leave accumulated with the Regional as well as under any predecessor agreement.

Against this backdrop, the Regional’s first proposes to define terminal leave as consisting of unused sick leave only. Second, it seeks to freeze existing accumulated terminal leave benefits over \$15,000 at the value fixed and calculated as of January 1, 2012. Since the agreement already has a \$15,000 cap for firefighters hired on or after regionalization, the proposal appears designed to modify the terminal leave benefit for former municipal firefighters.

The Regional has not met its burden of justifying these changes. With respect to the freeze on leave accumulations, the record does not indicate how

many employees the proposed change would affect; nor does it include any projections as to how much the Regional would likely save by virtue of the proposal's implementation. In addition, from a technical perspective, it is unclear how the proposed new "freeze" provision would mesh with the existing Article 26.B, which the Regional does not seek to modify or delete. These considerations militate against award of the proposal, as does the fact that Article 26.B has been in effect for over ten years and was one facet of the complex process of merging five fire departments into one.

While the Regional cites one arbitrator who capped terminal leave for all current employees at \$15,000 (or any greater amount banked as of a date one month following the award), the Regional has not shown a trend, either statewide or within Hudson County, of freezing accumulated terminal leave benefits above \$15,000. Indeed, some of the comparable jurisdictions cited by the Regional have terminal leave benefits that could generate substantial terminal leave payments.

Harrison (up to one year's salary) (Exhibit R-86, p. 18)

Newark (up to one year's salary) (Exhibit R-68)

Paterson (720 hours of terminal leave or 35.6% of the full wages and benefits earned by the employee as of his or her retirement date) (Exhibit R-94, p. 32).

Irvington (lump sum payment for accumulated sick days computed at the rate of ½ the employee's daily rate of pay at retirement, subject to a cap of \$8,500. In addition, any unit member with 25 years of service who meets

the PFRS age requirement shall be granted four months of terminal leave with pay commencing on the date of retirement (Exhibit R-88, pp. 22-24).

Other jurisdictions described in Exhibit R-68 employ a variety of formulas for calculating terminal leave, but the Regional has not shown that they prohibit a maximum benefit of more than \$15,000.

Similarly, the Regional seeks more restrictive terminal leave provisions than those that pertain for police officers in the constituent municipalities. For example, officers in Union City are not subject to a terminal leave cap and receive one-half day's pay for each unused sick day; the same formula applies to Weehawken officers hired before March 19, 2003 (Association Binder 1, Tab 9, p. 36; Tab 10, p. 40). Police officers in North Bergen are paid one-half day's pay for all unused sick days, subject to a cap of 75% of salary (Association Binder 2, Tab 11, p. 18). Weehawken officers hired after March 19, 2003 are subject to a \$15,000 cap with respect to all unused sick, vacation, and compensatory time but, as noted, officers hired prior to that time have not had their accumulations frozen.

In sum, while the benefits under the municipal agreements have led to large payments, those payments are already being phased-out over time, and continuation of the municipal schedules was one part of the merger process. For firefighters hired on or after regionalization, the \$15,000 cap results in a terminal leave benefit similar to or lower than that received by firefighters in comparable jurisdictions.

The Regional also has not met its burden of justifying its proposal to eliminate accumulated vacation leave from the terminal leave bank. This change must be considered together with Article 14.J, which first states that vacation time cannot be banked for more than one year and then clarifies that Article 14.J does not prevent accumulation of vacation time for purposes of placing the leave in the employee's terminal leave bank. Under the Regional's terminal leave proposal, a firefighter could be denied compensation for forfeited vacation time, even if operational constraints prevented him or her from using the time either during the year in which it was earned, or the ensuing year. Without more information as to the ease with which firefighters are able to schedule vacation leave, I decline to grant this proposal.

A third area addressed by the Regional's terminal leave proposal is the schedule for remitting payments owed. The Regional seeks to stagger those payments over a period of up to five years after retirement, depending on the size of the terminal leave obligation. The Regional's desire to spread out such payments is understandable, as is a retiring employee's interest in receiving the payments at an earlier date, if feasible. Without more particularized information as to how many employees have terminal leave banks that would trigger the longer payment schedules, I find that the Regional has not met its burden of showing that this proposal is warranted. I note as well that the Regional has exercised its option

under *N.J.S.A.* 40A:4-53(h) to authorize “special emergency appropriations” to fund “contractually required severance liabilities” resulting from employee retirements. That statute allows the payments to be made over a period of five years.

Regional’s Overtime Proposal

The Regional proposes to amend Article 28, Section H to remove current language stating that firefighters will be paid at the overtime rate when required to attend training for the purpose of retaining certifications or qualifications or continuing education and training. The Regional instead proposes that officers receive compensatory time that will not accumulate toward any terminal leave benefit.

I decline to award this proposal. The record does not disclose how often this mandated off-hours training occurs or how costly it is to the employer. There is thus no justification for changing the current provision.

Regional’s Health Benefit Proposals

The Regional and the Association have sharply contrasting positions on the Regional’s proposal to provide health insurance coverage that mirrors the SHBP. The Regional argues that the existing Horizon Blue Cross/Blue Shield coverage already closely resembles the SHBP and it maintains that award of its proposal would help it contain escalating health costs.

The Association strongly opposes the proffered health benefits change, stressing that Chapter 2 and Chapter 78 have already imposed substantial new health benefits contributions on employees and, as a result, have effectively lowered employer costs. The Association also objects to the change on the grounds that the SHBP can unilaterally alter many coverage features, as it did when it eliminated traditional coverage in 2008. It underscores the strong interest employees have in being able to negotiate health coverage changes.

In the particular circumstances of this case, the Regional has not shown that this health benefits proposal is warranted. I recognize that health benefit premiums have increased in recent years and the Regional's insurance broker testified that a plan modeled on the SHBP would cost less than the existing plan.

However, a critical point is that, beginning with the 2010-2011 contract year, the Regional has received significant employee premium contributions. Under Chapter 2, the Regional received approximately \$210,000 in such payments, an amount that was augmented in the 2011-2012 contract year by the additional contributions that some employees were required to make under Chapter 78. As Chapter 78 is phased in 2012-2013 and 2013-2014, employee contributions will continue to grow and will help mitigate the impact of health insurance premiums on employers.

These enactments do not preclude the award of additional health benefits changes that would result in more cost savings. However, the advisability of awarding the Regional's proposal must be evaluated in the context of the unit's overall compensation package, and the award as a whole, which includes lower salary increases than would likely have been awarded in a more favorable economic climate. In this posture, the Regional has not met its burden of justifying a change in longstanding contractual language on health insurance coverage.¹⁸

The Regional also proposes to amend Article 31 to state that all new hires who retire will receive health benefits at the same level as active employees "for themselves only." For current employees, the Regional does not seek to eliminate retiree dependent coverage, but it does propose that current employees who retiree will receive health benefits at the same level as active employees.

In evaluating these proposals, I am cognizant that firefighters have physically rigorous job responsibilities and are eligible to retire after 25 years of service. They thus have a strong interest in retiree health benefits that cover themselves and their dependents. In this context, the Regional has not made an adequate showing that the "retiree coverage only" proposal is warranted.

First, the quoted provision would not take effect until well in the future, so no tangible cost savings would result for 25 or more years. Second, retired

¹⁸ The 2004-2009 agreement states that "effective with the signing of this agreement" new hires will be required to pay the difference between traditional insurance and Direct Access (Exhibit R-8, p. 27).

firefighters in comparable jurisdictions receive retiree health benefits (Exhibit R-67), as do retired officers in the North Bergen, Weehawken and Union City police departments. The Regional has not demonstrated that such coverage is typically limited to just the retired firefighter.¹⁹

By contrast, I do award the provision that health coverage for future retirees (including current employees who retire after June 29, 2013), shall be the same as that provided to active employees and will change when the coverage for the active group changes. To the extent that new negotiated health care provisions reduce costs to the employer, this provision will decrease employer costs for retirees as well. Further, in an evolving health care environment, it will also eliminate potential difficulties in securing coverage that tracks requirements that were negotiated many years in the past.

Regional Proposal on Vacation Scheduling

Article 14.D now states that on all holidays and summer days, 10 firefighters may be off on vacation; the figure is seven at all other times. The Regional proposes to change these figures to seven and five, respectively. It reasons that the current clause was negotiated at a time when the Regional employed 36 more firefighters than it does at present. I conclude that the Regional has demonstrated

¹⁹ The contracts for many of the jurisdictions listed in Exhibit R-67 do not mention retiree health benefits. Those benefits are presumably established by municipal ordinance.

the need for this modification, which is intertwined with its capacity to provide responsive and timely emergency services in a cost efficient manner.

DeOrio testified that the Regional is organized into 15 companies, with a minimum of three rank-and-file firefighters required for each shift. With the current complement of firefighters, DeOrio stated that the Regional is five firefighters short on every shift and is in overtime mode almost every day. He added that under the current vacation standards, summer is an especially troublesome time for ensuring that the Regional is adequately staffed.

While I recognize that this problem may be ameliorated if and when additional firefighters are hired, it is essential to ensure adequate coverage under present conditions without excessive reliance on overtime, which is both expensive and a potential strain on firefighters. Accordingly, the Regional's proposal is awarded.

In so holding, I have considered the Association's position that the alleged need for these changes is undercut by Exhibit R-23. That document shows that, between 2009 and 2011, there was a slight reduction in the number of firefighters off on any given day. However, because unit size also declined during this period,

Exhibit 23 does not negate the Regional's concern that the current 10/7 figures can impede the Regional's ability to properly staff all companies and shifts.²⁰

Association's Vacation Scheduling Proposal

The Association's vacation scheduling proposal seeks to delete the Article 14 "buffer" provision that pertains to certain summer vacation day requests. Some background is necessary to understand this proposal.

Article 14.D now states that the Regional's vacation scheduling procedure will permit all firefighters to have four vacation days off during the summer, if they so desire. Unit members are also permitted to request a fifth or sixth summer vacation day, but Article 14.E states those requests will be governed by a "buffer of three."

The Association describes how this concept is implemented. If, for example, the initial vacation picks result in six firefighters being scheduled for vacation on a given summer day, the buffer of three permits an additional firefighter to be on vacation under the ten-firefighter standard in the 2004-2009 agreement. Article 14.E also states that beginning with the summer of 2008 (and all subsequent years if no new agreement is in effect), the buffer will be adjusted

²⁰ By seeking to replace the existing Article 14.D with a new article consisting solely of a new schedule of vacation day benefits (which I have already discussed), and new standards for how many firefighters may be off at any one time, the Regional's Final Offer also effectively proposes to delete existing Article 14.D language that governs the vacation bidding procedure and guarantees that firefighters are entitled to four days off in the summer, if desired. Similarly, the Regional's Final Offer seeks to delete the existing Article 14.C, which allows vacation to be taken in 12-hour as well as 24-hour blocks. The record does not include sufficient information on any of these items to fully evaluate either their import or the impact of deleting them. Therefore, I have modified Article 14.D only as expressly stated and have not awarded any changes to Article 14.C.

based on the unit's sick leave usage during the prior year. Thus, if sick leave had exceeded 4440 hours in 2008, the 2009 buffer would have been four.

The Association argues that the buffer should be eliminated. It contends that no other municipality uses a buffer system, which it characterizes as nothing more than an artificial attempt to limit the use of vacation time.

I find that the Association has not met its burden of justifying removal of the buffer, particularly during a period of time when the Regional has been unable to hire new firefighters to replace retirees.

The Article 14.E buffer must be considered together with the Article 14.D guarantee of four summer vacation days, which results in a peak use of vacation hours in July and August and a concomitant spike in overtime during the same months (Welz Certification, Exhibit A). The four-day guarantee commits the Regional to paying overtime, if required, to meet minimum staffing levels. The negotiated buffer clause is a mutually agreed upon way of allowing a fifth or sixth vacation day during the summer, while also balancing the need to contain overtime; keep fire houses staffed and other absences (*e.g.*, sick leave) covered. As noted, overtime is both costly and a potential strain on a firefighter unit that is less fully staffed than in the past. For these reasons, the Association's proposal is denied.

Other Regional and Association Vacation Proposals

Two other vacation proposals have been raised in this proceeding. The first is the Regional's proposal to specify that vacation time shall be pro-rated in a firefighter's final year of employment. The Association objects that there is no rationale for discontinuing a negotiated entitlement to full vacation in an individual's final year of employment.

While it can be inferred that the Regional seeks this change in order to save money, there is no particularized discussion of the burden this benefit imposes. It is one of many components of an average overall compensation package. Its deletion is not warranted in the context of a proceeding where very moderate across-the-board increases have been awarded.

A second vacation-related change is the Association's proposal that firefighters be permitted to bank up to the maximum number of vacation days allowed per year. Currently, vacation time may be banked (for one year) only if the firefighter was prevented from taking scheduled time due to departmental needs or disability. Vacation time not used may be placed in the terminal leave bank. *See* Article 14.J. This language effectively incorporates *N.J.S.A.* 11A:6-3(e), which provides that:

Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only; except that vacation leave not taken in a given year because of duties directly related to a state of emergency declared by the Governor may accumulate at the

discretion of the appointing authority until, pursuant to a plan established by the employee's appointing authority and approved by the [civil service] commission, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining.

The Association has not met its burden of justifying the award of this proposal. There is a public and employee interest in using vacation time within the current contractual framework since, as the Association recognizes "use and enjoyment of vacation time is important to all employees, especially those such as firefighters, who have stressful jobs." The Association has not shown that firefighters have been unable to schedule their allotted time in accordance with existing protocols, and the vacation banking as proposed by the Association would seem to run afoul of *N.J.S.A. 11A:6-3*, since it appears designed to allow banking without regard to the employee's inability to use the leave in the year earned. In any case, implementation of the Association's proposal could result in scheduling difficulties in ensuing years, if employees seek to use vacation earned in the current year, as well as some of the banked time. For these reasons, the proposal is denied.

Union Release Time – Regional and Association Proposals

The Regional and the Association each propose changes to Article 3, Association Rights, although they focus on different sections of the article. The Regional seeks to modify Section A, by reducing from four to two the number of elected Association officers who are entitled to paid time off to attend certain

designated conventions. The Regional also proposes to limit such leave time to 200 hours, after which point one employee would be allowed time off to attend some AFL-CIO, IAFF, and FMBA conventions, as long as the leave does not result in overtime.

The Association proposes to change Article 3, Section B, which permits up to three authorized Association representative reasonable time off with pay to attend Association business. The Association seeks to somewhat expand the definition of Association business and to delete the reference to “three” Association representatives.

I do not award either party’s proposals, in part because the contract sections at issue are the subject of pending litigation before PERC. In August 2009, the Association filed an unfair practice charge against the Regional that resulted in a settlement agreement that governed the type of union leave time addressed in Article 3, Sections A and B. The settlement agreement read:

The parties agree that the Association shall have 400 hours per year of paid release time from work to conduct union business and attend union conventions. The Association shall have an additional 50 hours per year of paid release time to attend to union business provided that the additional 50 hours does not generate any overtime pay for the Regional. The 450 hours per annum is the maximum paid release time for all Association representatives conducting union business, except that nothing herein shall be construed to prohibit Association representatives from using paid personal time such as vacation leave to attend union activities.

On August 3, 2011, the Association filed another unfair practice charge alleging that the Regional had failed to comply with the terms of this settlement when it denied firefighter requests to attend a State convention and FMBA monthly meetings. An application for interim relief accompanied the charge.

At the close of an August 12, 2011 hearing on an Order to Show Cause, the Director of Unfair Practices granted the Association's application, reasoning that because of the "failure of the employer to abide by the terms of the [settlement] agreement" the Association had demonstrated a substantial likelihood of success on the merits of its claim that the Regional had repudiated the agreement. The Director also concluded that the Association had made the requisite showing of irreparable harm. Accordingly, she granted interim relief with respect to the release of a union representative on union release time to attend an August 15, 2011 FMBA meeting. *See I.R. 2012-9 (October 14, 2011).*

No final unfair practice decision has been issued in this matter and I decline to grant either party's proposal while litigation over the settlement agreement is still pending. Furthermore, the record includes no particularized information about how often and for what purposes leave time has been sought under either Article 3 or the settlement agreement. Thus, I cannot evaluate the Association's claim that the 400 hour cap in the settlement agreement should be abandoned in favor of more general language affording the Association "reasonable" time off.

Nor can I meaningfully assess the Regional's proposal to cap union leave at 200 hours.

Finally, I am not persuaded that the Regional's proposal should be awarded because union leave contributes to the unit's "outrageous" overtime. First, as adverted to in the public interest and financial impact discussions, some of the overtime in recent years is attributable to the Regional's inability to hire new firefighters to replace retirees. Second, there is no evidence in the record as to how much overtime is attributable to union leave. Nor is there evidence that the Association has abused its rights under Article 3 or the settlement agreement.

Union Leave – Additional Regional and Association Proposals

The Regional also proposes to amend Article 3.E, Ceremonial Activities, to permit at least two Association officers time off to participate in funeral services in the event a firefighter or fire officer is killed in the line of duty. The current clause states that "at least four" officers shall be granted leave time if they are scheduled to work. Article 3.E also provides that "subject to availability" the Regional will permit a fire department vehicle to be used in the funeral service.

The Regional has advanced no reason for modifying this clause and submitted no information concerning how frequently it is invoked. I decline to award a change in a provision that allows the Association to honor a fellow firefighter who has made the ultimate sacrifice.

For its part, the Association proposes a new contract provision affording the Association President full release time. It asserts that this change would put the Association President on a par with union presidents in other large fire departments such as Jersey City, Camden, Newark and Paterson. The Association stresses that it represents hundreds of members and that full release time is necessary to allow the President to address grievances, health and safety concerns, and the types of issues that have arisen in this arbitration. It also suggests that full-release time might ease the tension created by “the Association’s need to service its members and the Regional’s tireless attempts to prevent it.”

This is a costly proposal that I decline to award in the current fiscal climate. In addition, the Association has made no showing that either Article 3 or the settlement agreement unreasonably restrict its ability to provide services to its members.

Association’s Longevity and Acting Out-of-Title Compensation

The Association proposes two enhancements to the current compensation package. The first pertains to the longevity benefit for firefighters hired on or after regionalization.

The Association seeks to increase the 20-year longevity benefit from 7% to 9% and the maximum benefit (commencing at the 23rd year), from 9% to 11%. The Association reasons that award of this modification will narrow the gap

between the longevity earned by firefighters hired by the Regional and that received by unit members who were previously employed by one of the municipalities. The latter group is eligible for maximum longevity of 14% (or any higher percentage attained under a municipal agreement for service accruing through December 31, 2002).

The Association explains that the underlying rationale for its proposal is “equal pay for equal work.” It observes that while the two groups of firefighters have separate salary guides, both guides have the same top step salary. It also stresses that the change will have no economic impact until the year 2020 at the earliest.

The Regional counters that the Association’s proposed change is a costly one that the Association has not justified. The Regional also contends that the proposal runs counter to the trend in recent awards and settlements, where the longevity benefit in many jurisdictions has been converted from a percentage of salary to a fixed dollar amount.

In the current fiscal environment, I have decided to allocate economic enhancements to across-the-board salary increases and, accordingly, I do not award the Association’s proposal. While I recognize that an increase in the two top longevity tiers would not have an impact during this contract term, I am still reluctant to add costs to the existing benefit structure. In addition, due to the

circumstances surrounding the Regional's formation, uniformity across all benefit and salary items will not be achieved until this unit is comprised solely of firefighters hired on or after regionalization.

I turn next to the Association's proposed amendment to Article 34.C, Acting Pay, which currently states that temporary assignments to higher rank during vacation, sick leave, or other leave shall continue to be made by the Regional in conformance with DOP rules. The clause goes on to state that a qualified employee with at least three years on the job may refuse to serve in an acting capacity without prejudice, albeit the Regional reserves the right to order such service without additional compensation after exhausting efforts within the battalion to secure an acting officer.

For calendar years 2006 and 2007, Article 34.D afforded all eligible members a \$500 payment, presumably in lieu of compensation for each acting assignment. Article 34.D eliminated this compensation effective January 1, 2008.

Within this framework, the Association proposes to add a clause stating that a firefighter shall receive \$300 for each 24-hour period that he or she temporarily assumes the position of company officer (captain) due to either a vacancy in the position or a medical leave of more than two days. The Association underscores that a firefighter temporarily serving as a captain has the same responsibilities as a duly appointed company officer. It also argues that it is unfair and inequitable for

the Regional to refuse to promote sufficient firefighters to the rank of captain while declining to pay firefighters for temporarily assuming captain duties. The Association adds that the requested \$300 payment is more than offset by the fire officer salary that the Regional saves.

The Regional strongly objects to this proposed change, which it estimates would result in an added annual expense of \$169,000 (Exhibit R-21).²¹ The Regional also contends that it has recently promoted several firefighters to higher ranking positions in an effort to limit the use of firefighters acting out of title.

My decision to allocate economic improvements to across-the-board salary increases leads me to deny this proposal, which would increase annual costs to the Regional. In addition, and beyond the fiscal impact of the requested change, the record does not indicate how often the average qualified firefighter serves in an acting capacity. Nor does it indicate how frequently firefighters serve do on a long-term basis as a result of a vacancy, where the employee's interest in additional compensation is stronger. Moreover, the Regional represents that it has promoted additional firefighters to the position of captain in an effort to reduce reliance on out-of-title assignments. In this posture, the Association has not met its burden of justifying the proposal.

²¹ The Regional estimates that the Association's proposal would cost \$253,000 annually, compared to the \$84,000 now expended on firefighters serving as acting captains. The latter figure appears to derive from the 2006 and 2007 payments referred to in Article 34.D.

Association Proposal – Employee Use of Apparatus/On Duty Apparatus

Two Association proposals pertain to employee use of the Regional's fire equipment. First, the Association seeks a clause specifying that the Regional will permit on duty apparatus to visit all local food establishments within their area of coverage for the purposes of obtaining necessary food supplies for their twenty-four hour shift.

Second, the Association proposes an amendment to the union leave article stating that the Regional will allow on duty apparatus to attend local Association, departmental, or NHRFR management committee meetings. The proposal states that while attending these meetings, the units will remain on duty and be prepared to respond.

The Association maintains that these proposals seek to codify practices that were in effect between 1999 and 2009 and were abruptly discontinued by the Regional without explanation. The Association emphasizes that once firefighters leave the firehouse they are fully prepared to respond to emergencies. It also contends that shopping in local establishments has the added benefit of allowing firefighters to keep in touch with the community and "size up" local buildings.

The Regional vigorously objects to these proposals, arguing that the prohibition against on-duty shopping arose when a citizen ran to a fire house seeking assistance and was unable to locate any firefighters. The Regional stresses

that a reduction in emergency response times is one of the Regional's most important goals and, as such, it must be aware of the location of all fire apparatus at all times. It adds that it is unnecessary for firefighters to "size up" buildings because the Regional conducts regular inspections. It points out as well that when not at a fire scene, firefighters have assigned tasks that must be completed at the firehouse.

Protocols for use of the Regional's fire apparatus are integrally intertwined with departmental operations and the Regional's core mission of providing timely emergency response. While the Association states that the proffered changes would not impair emergency response times, the critical point is that the union has not demonstrated affirmative reasons for awarding the proposals. It is reasonable to anticipate that firefighters could complete food shopping for their 24-hour tours during their off-duty time, or make arrangements to have food delivered. The Association has also not identified the employee interest in attending departmental meetings with fire apparatus.

The Associations proposals are denied.

Association's Assignment Bidding Proposal

The Association proposes that there shall be a seniority job bidding system for all vacant positions, with limited exceptions. The stated purpose of the procedure is to provide senior firefighters with the opportunity to work at the

location of their choice, as long as the firefighter is qualified for the particular position – *e.g.*, engine, ladder, rescue, boat/marine.

Under the 2004-2009 agreement, Article 34.B states that assignment and transfer of firefighters is the responsibility of the Executive Director in accordance with DOP rules. However, Article 34.B adds that an employee may request, in writing, a transfer to a new or vacant position for which the employee is qualified.

Association Vice President Vince Colacci testified in support of this proposal, explaining that employer-directed assignments and transfers can create morale issues, such as the belief that a personnel action was taken in retaliation for a firefighter speaking up on departmental issues. Colacci recalled one example of a firefighter who had expressed this view about his transfer. Collaci testified that, in his opinion, morale would improve if this bidding procedure were implemented.

The Regional responds that the job bidding proposal is not mandatorily negotiable because it impinges on its managerial prerogative to make staffing determinations based on each individual fire company's needs. Citing Executive Director DeOrio's testimony, it emphasizes that the Regional aims to achieve a balance between senior and less experienced firefighters when it makes shift and company assignments.

As a threshold point, I lack the authority to determine whether this proposal is mandatorily negotiable. Scope of negotiations questions rest in the first instance

with PERC. *N.J.S.A.* 34:13A-5.4d; *N.J.A.C.* 19:13-1.1 *et seq.* See also *N.J.A.C.* 19:16-5.5(c) (failure to file a scope petition in response to a petition to initiate compulsory interest arbitration is deemed to constitute agreement to submit all unresolved issues to the interest arbitrator).

For purposes of my analysis, the key point is that there is insufficient information on this record for me to conclude that this proposal should be awarded. The Association offered no particularized testimony concerning how frequently vacancies occur; how often firefighter requests to fill such vacancies are granted; or the differences, if any, between the duties and work environments at the various firehouses. Nor did its presentation convey a clear picture of the perceived problems with the current system of making assignments. In this posture, it has not met its burden of justifying the award of a complex procedure that would entail three rounds of annual bidding.

Association's PAC Proposal

The Association seeks a contract clause stating that the Regional agrees to make deductions for contributions to "the Political Action Committee." The Regional's obligation would be triggered when a firefighter submitted documentation to the Regional authorizing it to make the deduction. The Association reasons that this proposal would have no economic impact on the

employer, adding that it simply allows the Association to become part of the trend whereby PACs play an increasingly important role in the political arena.

The Regional responds that the Association has not justified the proposal, and maintains that it would entail additional administration costs.

The record includes no strong basis for either awarding or denying this proposal, and it is not essential. A firefighter can contribute to the PAC without a payroll deduction. Therefore, the PAC proposal is denied.

AWARD

1. Term of Agreement

July 1, 2009 through June 30, 2013.

2. Salaries

2.0% across-the-board increase effective January 1, 2010.

2.0% across-the-board increase effective January 1, 2011.

1.5% across-the-board increase effective January 1, 2012.

1.0% across-the-board increase effective January 1, 2013.

Each increase applies to all steps of the existing salary guide and is retroactive to its effective date.

3. Article 31, Health Insurance

Effective June 30, 2013, all current Firefighters (including dependents) who retire shall receive the same level of health benefits as active employees and those benefits in retirement are subject to change as the benefits of active employees change.

4. Article 14, Vacation

Effective January 1, 2013, delete the first two sentences of Article 14, Section D and replace with the following:

Effective January 1, 2013, the number of firefighters permitted off on all holidays is seven (7). On all summer days seven (7) firefighters can be off and on all other days 5 firefighters can be off.

5. All proposals of the Regional and the Association not awarded herein are denied and dismissed. All provisions of the existing collective negotiations agreement shall be carried forward except for those provisions modified by the terms of this Award.

Dated: August 20, 2012
Princeton, N.J.

Timothy A. Hundley
Timothy A. Hundley
Arbitrator

State of New Jersey }
County of Mercer }ss:

On this 20th day of August 2012, before me personally came and appeared Timothy A. Hundley to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

Virginia G. Hundley
Virginia G. Hundley
Notary Public of New Jersey
My Commission Expires 6/22/2015