

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
-----X

In the Matter of the Interest
Arbitration X

- between - X Case No. IA-2008-040

CITY OF PATERSON X

"City" X

X

- and - X

PATERSON FIREFIGHTERS ASSOCIATION X

X

"Association"

-----X

APPEARANCES

For the City

DORF & DORF, P.C.

Gerald L. Dorf, Esq., Of Counsel

For the Association

LAW OFFICES OF ANTHONY D. RINALDO, JR.

Anthony D. Rinaldo, Jr., Esq.

BEFORE: Martin F. Scheinman, Esq., Interest Arbitrator

BACKGROUND

The City, located in Passaic County, New Jersey, has a population of approximately one hundred fifty thousand (150,000) residents, within eight and one half (1/2) square miles. Its Fire Department is the third (3rd) largest in the State of New Jersey, with approximately three hundred thirty (330) uniformed and sixty (60) civilian personnel. The Union represents some two hundred fifty (250) firefighters employed by the City.

The parties are signatories to a Collective Bargaining Agreement ("Agreement") which expired June 30, 2005. They engaged in extensive negotiations for a successor Agreement. In September 2007 the parties reached a tentative written accord ("tentative accord"), subject to approval by the Paterson City Council, ("City Council"). On January 10, 2008, with approval from the City Council not forthcoming, the Association petitioned the New Jersey Public Employment Relations Commission ("PERC") for appointment of an Interest Arbitrator.¹ On April 25, 2008, PERC appointed me as Interest Arbitrator.

Thereafter, hearings were held on August 13, 2008, November 6, 2008, and January 14, 2009, at City Hall, Paterson, New Jersey. At these hearings, the parties were afforded full opportunity to present evidence and argument in support of their

¹The City Council formally rejected the parties' tentative accord on August 12, 2008.

respective positions. They did so. I also met with counsel for the parties in executive session on February 4, 2009.

Thereafter, the parties submitted written post-hearing briefs.

Upon receipt of those submissions, I declared the record closed.

As required by statute, the parties submitted final offers on economic and non-economic issues in dispute, as follows:

Association's Final Offers

1. Contract term: five (5) years (July 1, 2005 through June 30, 2010).

2. Wage Increase (Article 5):

July 1, 2005:	3.75%
July 1, 2006:	4.5%
July 1, 2007:	4.5%
July 1, 2008:	3.5%
July 1, 2009:	3.5%

3. Grievance Committee (Article 2.5): omit last sentence which states "The release time provided for in this section shall not interfere with the emergency requirements of the Fire Department".

4. Holiday Pay (Article 8.5): Employees scheduled to work on any of the twelve (12) scheduled holidays shall receive one-half (1/2) times their regular hourly rate for all hours worked on said holidays in addition to their regular day's pay.

5. Longevity (Article 13.50): An increase to the longevity payments according to the following schedule:

<u>Years of Service</u>	<u>Longevity Payment</u>
5	2%
10	4%
15	6%
18	8%
20	10%
21	12%
22	14%
23	16%
24	18%

6. Certification (Article 13.8): the Association expressed concern proposed new language on training might result in firefighters being sent for training that was not job-related. It seeks additional assurances in this regard.

7. Alcohol and Drug-Free Workplace (Article 29.1 and Attachment A): Authorizes drug testing based upon "reasonable individualized suspicion" only.

City's Final Offers

1. Contract Term: Agrees to Association's request for a five (5) year term, July 1, 2005 through June 30, 2010.

2. Wage Increase (Article 5): Agrees to the Association's request.

3. Grievance Committee (Article 2.5): reinstate the last sentence, stating: "The release time provided for in this section shall not interfere with the emergency requirements of the Fire Department".

4. Holiday Pay (Article 8.5): Modifies its initial proposal to delete, in its entirety, the Association's request to increase pay for employees scheduled to work on any of the twelve (12) scheduled holidays by fifty (50%) percent to time and one half (1/2). Instead, the City proposes the Association's holiday pay proposal take effect late in the last year of the Award (which ends on June 30, 2010), preferably on the last day of the term. In addition, the City proposes the increase in holiday pay be paid for in either cash or compensatory time, at the discretion of the Fire Chief.

5. Longevity (Article 13.50): Agrees to acceleration of longevity payments according to the schedule put forth by the Association, but proposes the schedule take effect late in the Award, preferably in the last year.

6. Night Differential (Article 13. 7): The City proposes deletion of the three (3%) percent Differential for employees working between 6:00 p.m. and 8:00 a.m.

7. Certification (Article 13.8): Supports language recognizing the City's right to send firefighters to training the City deems necessary. To emphasize the training will be job-related, the City proposes modifying the first sentence of the new provision by adding the underlined language: "The City retains the right to send any and all employees to any training it deems necessary and which is reasonably related to fire duties

and or for legal requirements".

8. Alcohol and Drug Free Workplace (Article 29.1) and Attachment A: Proposes the new Alcohol and Drug Testing Policy, which provides for alcohol and drug testing based upon "reasonable suspicion", also include random alcohol and drug testing.

DISCUSSION AND FINDINGS

Positions of the Parties

The parties agreed their successor agreement should be five (5) years in length, from July 1, 2005 through June 30, 2010. As well, they agreed it should incorporate the wage increases proposed by the Association. These provisions are not in dispute, conform to the statutory criteria as explained below, and shall be awarded.

During the course of this proceeding, the parties also agreed their tentative accord for a successor agreement, is acceptable to each of them and should be awarded, except for those issues identified below and disposed of in my Award. Transcript at 41-42. These, too, shall be awarded, consistent with the statutory criteria.

As to those remaining issues, the parties have made the following arguments in support of their respective positions.

The Association argues its proposal to pay time and one-half (1/2) holiday pay is appropriate and should be granted

retroactive to July 1, 2005. It claims City firefighters work an average of two (2) to three (3) holidays per year. The Association maintains comparison of its members' terms and conditions of employment, with those of City police officers, is appropriate. While not claiming City police officers receive holiday pay at time and one-half (1/2), it argues police officers receive more favorable time off and monetary compensation than City firefighters. The Association asserts this differential between its members and City police officers, in annual leave and overall compensation, should be reduced, as both bargaining units are engaged in provision of skilled emergency services to the City and its residents. It argues granting City firefighters holiday pay at time and one half (1/2) will reduce the total compensation differential between its members and City police officers.

The Association contends its proposal for holiday pay is affordable. It asserts the City does not claim any inability to pay time and one-half (1/2) for hours worked on holidays. The Association argues its proposal will serve the public interest by maintaining fair compensation for its members.

As to longevity, the Association contends its proposal provides City firefighters an accelerated schedule of payments over that provided in the expired Agreement. It argues its proposed schedule will better enable the City to retain

experienced firefighters for longer periods of time, to the benefit of the City's residents and property owners.

The Association acknowledges the New Jersey Division of Pensions ("Division") has raised issues in the past concerning whether certain longevity payments will be creditable by the Division's Pension Board of Trustees for purposes of calculating pension benefits. However, it contends any issues of crediting longevity in a unit member's pension calculation are beyond my jurisdiction, and properly resolvable by administrative review procedures otherwise provided by law.

The Association asserts there is no objection from the City to the content of its longevity proposal. Rather, it maintains the City objects only to the timing of its adoption, urging it be provided in the last year of my Award. In the Association's view, delaying the revised longevity schedule is unwarranted, and will reduce morale within the workforce while undermining the City's ability to retain experienced firefighters for the long term. The Association, therefore, urges its proposal be adopted retroactive to July 1, 2005.

As to the City's proposal to eliminate the existing Night Shift Differential, the Association argues the three (3%) percent Differential, established by the 1983 Award of Arbitrator Robert Mitrani, should be continued. It notes that Differential, three (3%) percent per hour for hours worked between 6:00 p.m. and 8:00

a.m., has been continued in all collective bargaining agreements through the most recent contract that expired June 30, 2005. The Association asserts this Differential is in line with the five (5%) percent night Differential presently paid to City police department employees. Though police receive a higher percentage Differential, since firefighters receive their Differential for a greater number of hours, the Association maintains the existing Differential is comparable and should continue. It asks I reject the City's demand to eliminate the Differential.

The Association argues proposed new language concerning training, contained in paragraph 13.8 of the tentative accord, be rejected. It contends this language, stating the City "...retains the right to send any and all employees to any training it deems necessary", is vague as to its meaning and overbroad as to its scope. The Association claims issues of training are already covered by management rights provisions of the tentative accord. Therefore, it asks this aspect of the training proposal be rejected as unnecessary.

The Association opposes the City's proposal for random drug and alcohol testing. It views random testing as an unwarranted infringement upon protections against unreasonable searches and seizures and its members' privacy rights. The Association recognizes some courts have found carrying of weapons by certain public employees is a factor supporting application of random

drug testing. However, it claims City firefighters are not called upon to carry weapons or use deadly force as part of their job and should not be subjected to random testing. The Association argues absent a showing of widespread drug use by its members, a random testing policy is unconstitutional. It insists no such showing has been made by the City. The Association, thus, opposes the City's proposal for random drug and alcohol testing of its members.

The Association, however, acknowledges a drug and alcohol testing policy is beneficial to the health and well being of its members and the community they serve. It argues such a policy should be based upon reasonable, individualized suspicion. The Association points to the "Alcohol and Drug Free Workplace Program" contained in its tentative accord with the City, as the proposal which should be awarded. It claims that program is properly based upon a standard of reasonable, individualized suspicion. The Association maintains that program strikes the proper balance between employee privacy and the City's need to provide a safe working environment. It views that program as providing a desirable mechanism for recognition and rehabilitation of unit members who may have drug or alcohol issues. Accordingly, the Association urges I award the "Alcohol and Drug Free Workplace Program" recited in its tentative accord with the City, and reject the City's attempt in this proceeding

to expand it.

The Association emphasizes its tentative accord with the City contains many provisions, including but not limited to, provisions for health benefits, prescription drug coverage, salary schedules, stipends, and mutual swaps, which are not in dispute. It asks I direct their adoption in my Award, and retain jurisdiction to ensure their inclusion in a successor agreement.

In all, the Association argues its positions and proposals best comply with all relevant statutory criteria as set forth in N.J.S.A. 34-13A-16(g), and should be awarded. It also maintains the proposals being pressed by the City which it disputes should not be awarded.

The City, on the other hand, argues the Association's proposal for holiday pay at time and one-half (1/2) should be delayed until the last day of my Award. It contends doing so will enable the City to avoid burdensome retroactive holiday pay adjustments, while still providing bargaining unit members an element of compensation they did not have before. The City emphasizes it has agreed to the Association's principal wage demands, despite the recent, substantial economic downturn. It insists its burden of funding those wage increases will be substantial. In the City's view, delaying the start of holiday pay until the last day of the term is reasonable under present economic circumstances and will better enable it to fund wage

increases for the bargaining unit.

The City also proposes the new provision for holiday pay include a grant of discretion to its Fire Chief to choose whether to issue holiday pay in cash, or compensatory time off, with due consideration for legal limitations imposed by the Fair Labor Standards Act ("FLSA"). It contends such discretion will promote the efficient management and operation of the City's Fire Department. The City argues Night Shift Differential should be eliminated as unnecessary. It contends the Differential came about as an incentive for firefighters to work nights while on a 10/14 schedule. The City insists this Differential makes little sense for firefighters working a twenty four (24) hour shift. As well, it maintains the compensation package otherwise being agreed to is already generous. Given the economic downturn and its effects, the City contends it is reasonable to eliminate the Night Shift Differential for bargaining unit members.

As to longevity, the City agrees the Association's proposed schedule should be adopted, but delayed until the last year of my Award. Its reasons for delaying longevity are similar to those recited for delaying holiday pay. The City emphasizes its agreement to the Association's proposed wage increases will be burdensome in the current economic environment. While it recognizes the requested longevity enhancements are beneficial and deserved, the City insists its proposal to delay their

implementation is reasonable under present economic circumstances.

As to Certification (Article 13.8), the City asserts its proposed language specifying a right to send firefighters for training it deems necessary, is appropriate and should be granted. It insists the Association has no legitimate ground for opposing this provision. The City argues it cured the Association's initial concern for this provision by agreeing to add language requiring the training be "reasonably related to fire duties and/or legal requirements".

The City argues the last sentence of the Grievance Committee Clause (Article 2.50 of tentative accord) should be reinstated, to provide, "The release time provided for in this section shall not interfere with the emergency requirements of the Fire Department". It contends this sentence was inadvertently omitted, is reasonable and should be restored.

The City argues my Award should include a provision for random alcohol and drug testing. It contends firefighter duties are safety sensitive. The City asserts random testing is essential to assure its firefighters are not impaired when called upon to handle fire emergencies. It insists such testing is needed to protect all firefighters, especially those facing high risk situations. The City claims municipalities are legally permitted to randomly test employees assigned to safety sensitive

positions. It asserts other municipalities in New Jersey have random testing drug and alcohol policies in force for employees whose duties are comparable to the City's firefighters. The City points to the City of Linden and County of Passaic as jurisdictions with random testing for firefighters. It also cites the Township of Edison as having random testing for emergency medical technicians.

The City emphasizes firefighters must depend upon each other for their safety and well being, and thus have a significant interest in assuring their colleagues are not working under the influence of illicit drugs, or alcohol. It represents, should a random drug and alcohol testing program be awarded, it will then undertake to draft a policy and negotiate its specific terms with the Association. In such event, the City asks I retain jurisdiction over the issue should the parties be unable to reach agreement on the terms of the policy.

The City asserts its tentative accord with the Union contains other provisions, including provisions for health benefits, prescription drug coverage, salary schedules, stipends, and mutual swaps, which are not in dispute. It asks they be adopted in my Award and retain jurisdiction to ensure their inclusion in a successor agreement.

The City argues its positions and proposals best comply with all relevant statutory criteria as set forth in N.J.S.A. 34-13A-

16(g), and should be awarded.

Opinion

Certain preliminary comments are appropriate. In the absence of an agreement to the contrary by the parties, the procedure to be used in this matter is conventional Interest Arbitration. As Interest Arbitrator, I must adhere to criteria set forth in N.J.S.A. 34:13A-16(g), which provides in pertinent part:

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

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

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

(a) In private employment in general; provided, however, each party shall have the

right to submit additional evidence for the arbitrator's consideration.

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

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

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

(4) Stipulations of the parties.

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

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

impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

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

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c.62 (C.40A:4-45.45).

I am thus bound to arrive at a just and reasonable determination of the matters in dispute, under the foregoing statutory criteria.

I have fully and thoroughly considered the entire record and the parties' arguments in support of their respective positions.

1. Term of Award

The City and Association have agreed and authorized me to issue an Award for a term of five (5) years, from July 1, 2005,

through June 30, 2010. I shall do so. I find such term appropriate and in the interests of sound labor relations. It will provide the parties a sufficient period of time, albeit not lengthy, to resume their relationship, free from the interruptions of collective bargaining. By comparison, a shorter term would require almost immediate resumption of negotiations for a successor agreement, at substantial cost in time and resources. I am convinced, a five (5) year term will best serve the interests and welfare of the public, by enabling the parties to work productively toward delivery of services, without the costly burden of having to immediately return to the bargaining table. I also conclude the City's residents are advantaged by a long term Award so City officials are best able to plan and budget knowing the costs of personnel represented by the Association.

2. Wages

The City and Association have agreed and authorized me to award the wage increases as set forth in Article 5 of their tentative accord, as follows:

July 1, 2005:	3.75%
July 1, 2006:	4.5%
July 1, 2007:	4.5%
July 1, 2008:	3.5%
July 1, 2009:	3.5%

The City has stipulated there are no impediments under the statutory criteria governing this proceeding, to my awarding

these increases. Transcript at 53. During the hearings, the City also represented it was not arguing any inability to pay these increases. Transcript at 54. It emphasized the tentative accord was reached between the Mayor and Association in 2007, before severe economic and financial events occurred in the national and regional economies. The City indicated it is honoring the wage accord set forth in Article 5, even if not legally bound to do so, recognizing it was reached after good faith bargaining.

In light of the foregoing representations and the parties' agreement they be granted, I shall award the agreed upon wage increases. Doing so will achieve a level of overall compensation for City firefighters in line with other comparable bargaining units within the City. The increases also comport with overall compensation paid by comparable communities within the region, to employees performing similar duties. I am convinced the wage increases will maintain a stable workforce, and will assist the City in advancing morale amongst its firefighters, who are routinely called upon to respond to emergencies and high risk situations. The public is not advantaged by a rift amongst its police and fire bargaining units if this unit was awarded substantially different terms of compensation.

The City acknowledges its ability to pay the wage increases being awarded. Even beyond the City's representation, evidence

presented at the hearings convinces me the City is able to afford these wage increases without undue strain upon its budget and without violating restrictions set forth in the New Jersey Cap Law. In all, I am persuaded the proposed increases should be granted under the relevant statutory criteria.² These increases shall be paid within a reasonable period of time, not to exceed two (2) months.

3. Grievance Committee

Section 2.50 of the expired Agreement gave release time with pay to members of the Association's Grievance Committee, for meetings with the City whose purpose was to adjust grievances and disputes. The last sentence of the clause stated, "The release time provided for in this section shall not interfere with the emergency requirements of the Fire Department". When the tentative accord was drafted, this last sentence was omitted. The City, claiming the omission was inadvertent, proposed in its Final Offer No. 3, this sentence be restored to the clause. During the hearings, the Association argued the proposal should be rejected.

²The proposed wage increases were not disputed by the parties, who waived further submission of evidence concerning cost of living, continuity and stability of employment, statutory restrictions imposed on the City and other statutory criteria. Instead, the parties agreed there were no impediments under the statutory criteria to my awarding these increases.

While I agree the City's firefighters would never insist grievance meetings be held in the face of an emergency requiring their presence, I, nevertheless, find it reasonable to restore this language. Obviously, grievance meetings can be delayed or rescheduled without loss of life or limb. The proposed language serves the public interest, by according the City appropriate discretion to adjust Grievance Committee release time to meet emergency requirements. It shall be awarded.

4. Certifications (Article 13.8)

The Association objected to the training language in Article 13.8 of the tentative accord, in particular, the first sentence of the clause which stated, "The City retains the right to send any and all employees to any training it deems necessary". The Association contended this sentence was overbroad and gave the Fire Chief excessive discretion to send unit members for training unrelated to their duties or the legitimate needs of the City. The City responded to this concern with additional proposed language requiring the training be, "reasonably related to fire duties and/or legal requirements".

I find the City's additional language cures the Association's objection. It is also consistent with statutory criteria. The public interest is served by having its firefighters fully trained in all aspects of their duties. The City should be permitted to send unit members for training to

keep current with techniques, equipment and developments affecting the mission of its Fire Department. As well, training necessary to meet requirements of law is appropriate. Accordingly, I shall resolve this language issue by awarding Section 13.8 of the tentative accord, with language requiring the training be reasonably related to fire duties and or legal requirements.

5. Holiday Pay

The parties included a provision for Holiday Pay at Section 8.5 of their tentative accord. While not bound to do so, the City represented it was agreeable to Holiday Pay at time and one-half (1/2), but proposed this provision be delayed until the last year of the term, preferably the last day of the term. The Association insisted the provision be implemented effective July 1, 2005.

Having fully considered the parties' submissions and arguments, and on balance, I find it appropriate to award the Holiday Pay provision effective January 1, 2010. Doing so will establish a new and significant element of compensation for unit members. It will bring them into line with comparable municipal jurisdictions, whose firefighters typically enjoy pay at time and one-half (1/2) for holiday work. At the same time, my Award relieves the substantial financial burden of having to make retroactive payments under currently difficult economic

conditions. Granting this proposal will benefit the public interest by supporting morale within the City's Fire Department and helping to assure City firefighters who serve on holidays are recognized for the sacrifices they are making by not being able to spend those holidays off duty.

Subject to the FLSA, I agree with the City's proposal for authority to pay holiday pay in cash, or in compensatory time, at the discretion of its Fire Chief. Upon the evidence presented, I find such proposal is comparable to terms and conditions existing for similar positions of employment within the Department and in certain other relevant bargaining units. If compensatory time is selected by the Fire Chief, firefighters shall be able to use this compensatory time in the same manner other compensatory time may be used in the Department.

6. Longevity

As with Holiday Pay, the City has chosen to honor its tentative accord reached in 2007 on this subject, but asks implementation of the accelerated longevity schedule be delayed to the last year of my Award. As well, and despite the tentative accord, the City raised concerns during the hearings over potential issues with the New Jersey Department of Treasury, Division of Pensions and Benefits, regarding this bargaining unit's longevity schedule. In particular, it pointed to a November 7, 2008, letter from the Division's Secretary of the

Board of Trustees of the Police and Firemen's Retirement System, Wendy Jamison. This letter raised issues certain longevity payments might not be creditable towards an employee's pension. The Association pointed out issues of a unit member's pension calculation are beyond my jurisdiction, and subject to administrative appeal processes. The parties urged I grant the longevity schedule recited in their tentative accord, their only difference being the date of its implementation.

Upon my thorough consideration of the parties' presentations, I find the Association's longevity proposal, as set forth in the parties' tentative accord, shall be granted effective July 1, 2009. The accelerated longevity schedule will allow the Association's members to keep pace with compensation received by comparable employees performing similar work for other jurisdictions. Delaying implementation of the schedule will provide the City relief from burdensome retroactive payments while otherwise having to fund stipulated wage increases in the challenging economic environment presently existing.

As concerns the pension aspect, I shall direct a provision be added by which the City agrees to cooperate with the Association should the New Jersey pension board make any claim the longevity schedule being awarded, herein, violates the New Jersey pension law or is not eligible for pension credit under applicable rules.

7. Night Shift Differential

I reject the City's proposal to eliminate the existing three (3%) percent Night Shift Differential. Such differentials are commonly provided employees performing similar duties in comparable jurisdictions. Although the City argued its firefighters work twenty four (24) hour shifts, I do not find compelling cause has been shown for ending this longstanding differential, which has been in place for some twenty five (25) years. Like other jurisdictions, the City's move to a twenty four (24) hour shift was not designed to increase or decrease compensation or accruals for its employees. Accepting the City's proposal would result in an unwarranted economic loss to firefighters.

Eliminating the longstanding Night Shift Differential would not be supported by relevant statutory criteria. Continuing the differential will benefit the public interest by maintaining fair compensation for firefighters, who are called upon to protect the property and residents of the City at all hours. The City has neither asserted, nor shown, any inability to continue paying the Night Shift Differential to its firefighters. The evidence presented persuades me the City is able to continue providing the Night Shift Differential without strain upon its budget and without exceeding limitations established by the New Jersey Cap Law. The stability of the City's Fire Department will be served

by continuation of the Night Shift Differential and will serve the public interest.

8. Random Drug and Alcohol Testing

After thorough consideration of the parties' presentations, I am persuaded a provision for random drug testing shall be awarded. There can be no question the position of firefighter is safety sensitive. Firefighters are called upon to respond to emergencies involving life and limb. Impairment of one (1) firefighter by illicit drugs or alcohol risks the lives and well being of not only that firefighter, but those working with him or her and the public at large who depend upon City firefighters for rescue and other life saving measures. In my long experience as an Interest Arbitrator in police and fire cases, I am convinced the rationale for random testing, and the interest of the public in assuring firefighters are free of the influence of alcohol or illicit drugs, outweigh any asserted privacy interest. The safety implications to unit members, and to the public they serve, are simply too great to deny the City's proposal.

Granting a provision for random drug and alcohol testing is not unique. It brings the City into line with certain other comparable jurisdictions whose firefighters and other emergency workers are subject to random testing. For example, the record shows Passaic County Fire Officers, City of Linden Firefighters, and Edison Township Emergency Medical Technicians, are all

subject to random testing.

I shall direct a provision for random drug and alcohol testing be adopted. However, I recognize there are different features parties might wish to incorporate into a testing program to best serve their respective interests. The parties should be given an opportunity to develop mutually agreeable procedures for such a program. Accordingly, I shall remand this subject to the parties for a period of ninety (90) calendar days to permit them to meet, confer and attempt to agree upon a procedure to implement random drug and alcohol testing. Should the parties be unable to agree upon such a procedure, I shall retain jurisdiction as it relates to the language of the random drug and alcohol testing policy.

9. Balance of Tentative Accord

The parties have asked the balance of their tentative accord, beyond those aspects determined above, be awarded. By doing so, they have asked I award the following changes, reflected in their tentative accord, to specified sections of their Agreement that expired June 30, 2005:

Section 7.20: Add provision, changing prescription drug co-pay from four (\$4.00) dollars per prescription to ten (\$10.00) dollars per brand name prescription and zero (\$0.00) dollars per generic prescription, including oral contraceptives.

Section 7.90: Modify effective retirement date for vesting of

same medical and health benefits as exist under the Agreement, from on or after July 1, 1998, to on or after July 1, 2005.

Revise "medical and health benefits" to read "medical health and dental benefits" where used in this section.

Section 7.91: Modify effective retirement date for protection of medical and health benefits from "prior to July 1, 1998" to "prior to July 1, 2005". Revise "medical and health benefits" to read "medical health and dental benefits" where used in this section.

Section 13.80(f): Increase the stipend for all firefighters who receive EMT certification or re-certification from five hundred (\$500.00) dollars per year to two thousand (\$2,000.00) dollars per year, to be paid in twenty four (24) equal installments.

Provide an annual stipend of two thousand (\$2,000.00) dollars per year in twenty four (24) equal installments, to the following additional personnel:

Emergency Medical Dispatchers - certified 9-1-1 and Emergency Medical Dispatchers;

Hazardous Material Technicians - certified hazardous materials technicians trained to the level of Technician;

Urban Search and Rescue Technician - firefighters receiving certification as USAR Technicians;

Arson Investigator - firefighters assigned as Arson Investigators.

Provide employees obtaining a certification or certifications pursuant to the above shall be entitled to receive the stipend of two thousand (\$2,000.00) dollars. Multiple certifications shall not entitle an employee to receive more than one (1) of the aforementioned stipends.

Section 17.12: Increase the number of mutual swaps per year allowed per initiator, from four (4) to eight (8).

I find these proposals appropriate. Increasing unit members' co-pay for brand name prescription drugs brings the City's health insurance program in line with comparable jurisdictions where prescription drug co-pays are established. Awarding this proposal will serve the public interest by reducing the City's financial burden of providing brand name prescription drug coverage. As well, reducing the co-pay for generic drugs should encourage greater use of generics, further reducing the City's program costs for providing prescription drug coverage. I shall award these proposed changes prospectively.

Modifying the effective retirement dates listed in Sections 7.90 and 7.91 will provide unit members retiring during the term of my Award, vesting protection for their existing medical, health and dental benefits, in line with protections enjoyed by employees performing similar work in comparable communities. It will also provide those firefighters who retired prior to the term of my Award, from having benefits affected by subsequent

contracts. Such protections are in line with those enjoyed by personnel holding similar positions in comparable jurisdictions. I find they serve the public interest by contributing to a stable workforce while protecting unit members' health coverage at the end of their active careers. The proposal shall be awarded.

I find the annual stipend proposals reasonable and in the public interest. The City benefits from having specialized expertise in those areas for which the stipends are proposed. The stipend amount of two thousand (\$2,000.00) dollars per year provides appropriate incentive for unit members to obtain these special certifications, or to serve as Arson Investigators. The expertise and service qualifying for these stipends will benefit the City, its citizens, and property owners, by increasing its ability to respond to fire and other emergencies and to investigate suspected cases of arson. The stipends are in line with incentives provided to similar personnel in comparable communities. The City has represented it is able to afford these stipends. The parties have also agreed there are no impediments under the statutory criteria to my awarding these stipends. The proposal shall be awarded.

As to the proposal to increase the number of mutual swaps, I find this proposal appropriate and reasonable. Upon the evidence presented, I am persuaded increasing the number of permitted mutual swaps will not impair the efficient operation of the

City's Fire Department, but will further morale amongst firefighters, by permitting greater flexibility in swapping tours while still maintaining coverage of City residents and properties consistent with operational needs.

In all, I find these proposed changes appropriate, especially considering the statutory command I consider stipulations of the parties. The parties have agreed there are no impediments under the statutory criteria to awarding these proposals. As well, the City has agreed it is not asserting any inability to pay for them. Accordingly, these proposed changes to the expired Agreement shall be awarded.

AWARD

1. Term of Award

The term of this Award shall be July 1, 2005, through June 30, 2010.

2. Wages

Wage increases are hereby granted as set forth in Article 5 of the parties' tentative accord, as follows:

July 1, 2005:	3.75%
July 1, 2006:	4.5%
July 1, 2007:	4.5%
July 1, 2008:	3.5%
July 1, 2009:	3.5%

These increases shall be paid within a reasonable period of time, not to exceed two (2) months.

3. Grievance Committee

Section 2.50 is awarded and shall state as follows:

2.50 The City will give release time with pay to the members of the Association Grievance Committee after they first report to their respective companies and commanding officers. The release time shall only be given to the members of the committee for the purpose of meeting with the Chief of the Fire Division, the Fire Director, or any other representative of the City for the purpose of adjusting grievances and disputes between the Association and the City. The release time provided for in this section shall not interfere with the emergency requirements of the Fire Department.

4. Certifications

The following clause shall be added to the Agreement:

13.8 Certifications

The City retains the right to send any and all

employees to any training it deems necessary, and which is reasonably related to fire duties and or for legal requirements. The City will pay any training costs. If an employee is required to attend training while off duty, they shall be entitled to overtime pay or compensatory time at the discretion of the City.

5. Holiday Pay

The following provision shall be added to the Agreement as Section 8.5:

Effective January 1, 2010, employees scheduled to work on any of the holidays listed, herein, shall receive one-half (1/2) times their regular hourly rate for all hours worked on said holiday, in cash, or compensatory time, at the discretion of the Fire Chief, in addition to their regular day's pay. Payment in compensatory time shall be subject to the FLSA and a firefighter shall be able to use compensatory time in the same manner other compensatory time may be used in the Department.

New Year's Day	Independence Day
Martin Luther King's Birthday	Labor Day
Lincoln's Birthday	Columbus Day
George Washington's Birthday	Veteran's Day
Easter Sunday	Thanksgiving Day
Memorial Day	Christmas Day

6. Longevity

Effective July 1, 2009, Section 13.50 of the Agreement shall be revised to read as follows:

In addition to the base salary of the employee, the following longevity will be paid commencing on the first complete payroll period following their anniversary:

<u>Years of Service</u>	<u>Longevity</u>
Five (5) years of service:	2%
Ten (10) years of service:	4%
Fifteen (15) years of service:	6%
Eighteen (18) years of service:	8%
Twenty (20) years of service:	10%

Twenty-one (21) years of service:	12%
Twenty-two (22) years of service:	14%
Twenty-three (23) years of service:	16%
Twenty-four (24) years of service:	18%

Should the New Jersey Pension Board make any claim the above longevity schedule violates the New Jersey pension law or is not eligible for pension credit under applicable rules, the City will cooperate with the Union in seeking an agreed upon solution.

7. Random Drug and Alcohol Testing

The parties shall provide for random drug and alcohol testing of members of the bargaining unit. This subject is remanded to the parties for a period of ninety (90) calendar days, during which time the parties shall meet, confer and attempt to agree upon a procedure to implement random drug testing. Should the parties be unable to agree upon such a procedure within said ninety (90) days, I shall retain jurisdiction as it relates to the language of the random drug and alcohol testing policy.

8. Balance of Tentative Accord

Section 7.20 of the Agreement shall be modified, effective the date of this Award, by changing the prescription drug co-pay from four dollars (\$4.00) per prescription, to ten dollars (\$10.00) per brand name prescription and zero dollars (\$0.00) per generic prescription, including oral contraceptives.

Section 7.90 is modified to read:

All retirees with an effective retirement date on or after July 1, 2005, shall be vested with the same medical, health and dental benefits that exist under this contract. Said benefits and the retiree's entitlement thereto shall be unaffected by future changes to medical, health and dental benefits by the City, whether established pursuant to subsequent contracts or otherwise.

Section 7.91 is modified to read:

Nothing in this contract shall affect the medical, health, and dental benefits to which the employees whose effective retirement date was prior to July 1, 2005, were entitled. Those retirees shall continue to be vested with their existing medical, health, and dental benefits as they enjoyed prior to July 1, 2005 and those benefits for those retirees shall not be subject to change by the City, whether established pursuant to subsequent contracts or otherwise.

Section 13.80(f) is modified to increase the stipend for all firefighters who receive EMT certification or re-certification from five hundred (\$500.00) dollars per year to two thousand (\$2,000.00) dollars per year, to be paid in twenty four (24) equal installments.

In addition, a new Section 13.81 shall be added to provide an annual stipend of two thousand (\$2,000.00) dollars per year in twenty four (24) equal installments, to the following personnel:

- a) Emergency Medical Dispatchers - certified 9-1-1 and Emergency Medical Dispatchers;
- b) Hazardous Material Technicians - certified hazardous materials technicians trained to the level of Technician;
- c) Urban Search and Rescue Technician - firefighters receiving certification as USAR Technicians;
- d) Arson Investigator - firefighters assigned as Arson Investigators.

Section 13.82 is added, stating:

Employees obtaining a certification or certifications pursuant to Sections 13.80 or 13.81 shall be entitled to receive the stipend of two thousand (\$2,000.00) dollars. Multiple certifications shall not entitle an employee to receive more than one (1) of the aforementioned stipends.

Section 17.12 is modified to increase the number of mutual swaps per year allowed per initiator, from four (4) to eight (8).

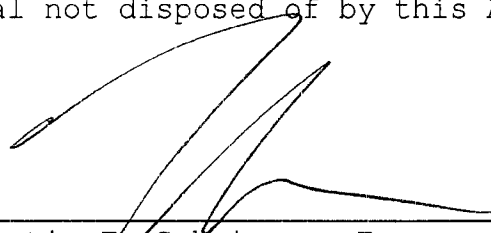
I shall retain jurisdiction to ensure these agreed upon provisions are included in a successor agreement.

10. Other Proposals

Any other proposal not disposed of by this Award is rejected.

Dated:

July 24, 2009



Martin E. Scheinman, Esq.
Interest Arbitrator

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

On this 24th day of July 2009, before me personally came
and appeared MARTIN F. SCHEINMAN, ESQ., to me known and known to
me to be the individual described in and who executed the
foregoing instrument and acknowledged to me that he executed the
same.

Sworn to and subscribed
before me this 24th day
of July 2009.



Notary Public

KATE TIERNEY
Notary Public, State of New York
No. 01T16136538
Qualified in Queens County
Commission Expires November 7, 2009.