

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

NORTH HUDSON REGIONAL FIRE AND RESCUE

“Public Employer,”

- and -

NORTH HUDSON FIRE OFFICERS ASSOCIATION

“Association.”

Docket No. IA-2000-36

**OPINION
AND
AWARD**

**Before
James W. Mastriani
Interest Arbitrator**

Appearances:

For the Employer:

Robert E. Murray, Esq.
Murray & Murray

For the Association:

Richard D. Loccke, Esq.
Loccke & Correia, P.A.

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I was designated to serve as interest arbitrator by the New Jersey Public Employment Relations Commission ["PERC"] in accordance with P.L. 1995, c. 425, in this impasse between the North Hudson Regional Fire and Rescue [the "Employer" or "Regional"] and the North Hudson Regional Fire Officers Association [the "Association"]. This is the first labor agreement between the Regional and the Association after the creation of a regional body to replace the paid fire departments in the municipalities of Weehawken, Union City, North Bergen, West New York and Guttenberg. The terms and conditions of employment for Fire Officers employed in these municipalities set by their previous labor agreements have remained in effect pursuant to statute, but shall, as a result of this Award, be replaced by a single labor agreement setting new terms and conditions of employment. This Award governs the Fire Officers. On this same date a separate award has issued governing firefighters.

On or about November 18, 1999 when the Association filed its Petition to Initiate Compulsory Interest Arbitration with PERC, it observed:

This dispute resolution process involves bargaining for an initial collective bargaining agreement. The public employer is a regional entity which is the result of a consolidation of five (5) separate public employers. The employee organization was first certified by the Public Employment Relations Commission (Docket No. RE-99-1) on March 16, 1999. This is unique with respect to rule application as it is a newly created employer as well as a newly created and certified bargaining unit. Traditional time periods and dates generally associated with other public employers may well not be applicable here.

Pre-arbitration mediation sessions were held February 15, 2000; March 13, 2000; April 18, 2000; and May 4, 2000. Although these sessions produced agreements on limited issues, they failed to achieve resolution of most of the issues in dispute. Formal interest arbitration proceedings were held on September 26, 2000; October 16, 2000; October 17, 2000; October 30, 2000; October 31, 2000; December 14, 2000; January 15, 2001; and February 13, 2001. Captain Joseph Zavardino, Fire Lieutenant Robert Focht, Brian McGorty, Fire Officer Martin Sanzari and Vincent Foti, Financial Consultant testified on behalf of the Association. The Regional presented testimony from Jeffrey Welz - Co-Executive Director for Administration, Michael DeOrio - Co-Executive Director and Christopher Pianese - Chief Financial Officer. The mandatory terminal procedure of conventional arbitration was used to decide all issues in dispute. Under this procedure the arbitrator has the authority to fashion an award which he believes represents the most reasonable determination of the issues in dispute.

The Regional and the Association have offered considerable testimony and extensive documentary evidence in support of their respective positions as well as post-hearing briefs. I have considered the testimony, the documentary evidence and the arguments set forth in the comprehensive post-hearing briefs filed by both parties. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-

16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

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

and hospitalization benefits, and all other economic benefits received.

- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

BACKGROUND

The Regional is a unique public employer. The history of the formation and operation of the Regional was placed in evidence. The Regional was formed as a Joint Meeting pursuant to the Consolidated Municipal Service Act, N.J.S.A. 40:48-B-1, *et seq.* It covers five (5) Hudson County municipalities; Weehawken, Union City, North Bergen, West New York and Guttenberg.

A Joint Meeting is a public body corporate and politic constituting a political subdivision of the State exercising public and essential governmental functions to provide for the public health and welfare. N.J.S.A. 40:48B-2.1a.

The “Consolidated Municipal Service Act” of 1952 provides in pertinent part:

The governing bodies of any two municipalities or counties or combination of municipality or municipalities and county or counties may enter into a joint contract for a period not to exceed 40 years to provide for the formation of a joint meeting for the joint operation of any public services, public improvements, works, facilities or undertakings which any such local unit is empowered to operate . .

N.J.S.A. 40:48B-2a.

A joint contract may provide for joint services in any service which any contracting local unit on whose behalf such services are to be performed is legally authorized to provide for itself. Such services shall include but not be limited to general government administration, health, police and fire protection, code enforcement, assessment and collection of taxes, financial administration,

environmental protection, joint municipal courts, youth, senior citizens and social welfare programs.

N.J.S.A. 40:48B-2b.

The joint contract: provide[s] for the operation of the public services, public improvements, works, facilities or undertakings of the joint meeting, for the apportionment of the costs and expenses of operation required thereof among the contracting local units as members of the joint meeting . . . The apportionment of costs and expenses may be based upon assessed valuations, population, and such other factor or factors . . .

N.J.S.A. 40:48B-4.

The regionalization was intended to consolidate the delivery of fire and rescue services for the participating municipalities with the goals of realizing cost savings while improving response time, and promoting life and property preservation. All personnel engaged in administration or direct firefighting services are experienced professionals in the fire service. By pooling the resources of the five municipalities, the Regional is able to provide a faster response and a higher level of manpower, benefiting both the public and the fire and rescue employees. The goal was described by Weehawken Mayor Richard Turner who stated:

The Regionalization approach is solid. If we can deliver a better service, it doesn't matter if the savings is 10¢ or 10 million dollars. If we save anything, we have helped the taxpayer.

Before the regionalization, West New York, Weehawken, Union City, North Bergen and Guttenberg each had their own departments, collective negotiations agreements and memorandum of agreements with their respective

Firefighter and Fire Officer unions. The memoranda served as bridges from contract expiration of prior agreements through the commencement of regionalization. Prior to regionalization, Guttenberg negotiated a transition contract adopting the terms of the West New York agreement. On or about September 30, 1998, each of these five municipalities adopted resolutions authorizing the establishment and maintenance of a joint fire, rescue and coordinated communications entity and also authorized ordinances for the sale, lease, transfer, conveyance or other disposition and improvement of real and personal property related to this merger of fire services.

On January 11, 1999, the Regional commenced operations. It began to respond to fires on a first alarm basis in North Bergen, Weehawken, West New York, Union City and Guttenberg.

At the time the Regional was formed, there were 222 Firefighters and 108 Fire Officers representing a combined total workforce of 330. Upon regionalization, 59 Firefighters and Fire Officers retired under an early retirement incentive program providing \$1,700,000 from the State of New Jersey for this purpose. At the time of hearing, there were 35 fewer firefighting personnel.

Upon its formation, the Regional recognized the four collective bargaining agreements and, as required by law, has implemented them. In doing so, the Regional was required to comply with a statutory status quo obligation in applying those Agreements. N.J.S.A. 40:48B-4.2 states:

Terms and conditions of existing contracts of merging bargaining units. Where bargaining units are merged which have contracts negotiated in accordance with the provisions of the "New Jersey Employer-Employee Relations Act," P.L. 1941, c.100 (C.34:13A-1 et seq.) in existence, the terms and conditions of the existing contracts shall apply to the rights of the members of the respective bargaining units until a new contract is negotiated, reduced to writing and signed by the parties as provided pursuant to law and regulation promulgated thereunder.

Prior to the merger of fire and rescue services, the Fire Officers were represented by four separate unions. In Weehawken, the Fire Officers were included in a unit containing Firefighters. After a secret ballot election, PERC, on March 16, 1999, certified the North Hudson Fire Officers Association to represent all Lieutenants, Captains, Battalion Chiefs and Deputy Chiefs of the new Regional.

Following the establishment of the North Hudson Regional Fire & Rescue Service, the Department of Personnel (DOP) requested that superior officers complete Duties Questionnaires for the purpose of standardizing the Merit System title structure to be utilized in the new consolidated fire force. The DOP then issued a decision modifying the classification structure. It held:

1. The duties and responsibilities associated with the functions of "Company Officers", serving as first-line supervisors of a group of Firefighters assigned to an engine or truck company, have been classified under the title of Fire Officer 1. Employees found to be performing these duties, who previously held permanent Merit System status in the titles of Fire Lieutenant or Fire Captain will be granted a lateral title change to Fire Officer 1 in accordance with the provisions of Merit System rule NJAC

4A:4-7.6. Under this rule, the affected employees will hold permanent status in the title of Fire Officer 1 and will be granted the same Merit System seniority in the title of Fire Officer 1 as they held in the title of Fire Lieutenant or Fire Captain.

2. The duties and responsibilities associated with the supervision of a fire battalion consisting of a group of fire companies, each headed by a Fire Officer 1, have been classified under the title of Fire Officer 2. Employees found to be performing these duties, who previously held permanent Merit System status in the title of Battalion Fire Chief, will be granted a lateral title change to Fire Officer 2 in accordance with NJAC 4A 4-7.6. The affected employees will hold permanent status in the title of Fire Officer 2 and will be granted the same Merit System seniority in the title of Fire Officer 2 as they held in the title of Battalion Fire Chief.
3. The duties and responsibilities associated with the supervision and administration of a fire platoon consisting of a group of battalions, each headed by a Fire Officer 2, have been classified under the title of Fire Officer 3. Employees found to be performing these duties, who previously held permanent Merit System status in the title of Deputy Fire Chief, will be granted a lateral title change to Fire Officer 3 in accordance with NJAC 4A: 4-7.6. The affected employees will hold permanent Merit System status in the title of Fire Officer 3 and will be granted the same Merit System seniority as they held in the title of Deputy Fire Chief.
4. Based on recent appointments to Deputy Fire Chief and Battalion Fire Chief positions assigned to staff functions, as well as reassignments to "Safety Officer" duties, revised Duties Questionnaires have been requested. Once our review of these positions has been completed, appropriate classification determinations will be issued under separate cover.¹

As a result of our review of these questionnaires and their subsequent verification with appointing authority and employee representatives, the following classification determinations have been made.

There are eighteen (18) fire companies in the Regional. Fire Officers are permanently assigned to each of the eighteen (18) fire companies except for

those assigned to staff duty. Both before and since the regionalization, all Firefighters and Fire Officers work a twenty-four (24) hour shift followed by seventy-two (72) hours off. The preservation of the status quo has resulted in Fire Officers having varied terms and conditions of employment including, but not limited to, salary, longevity, vacation, holiday pay, health insurance, and service differentials.

The Regional is a new entity and thus, is a new employer. It does not have the lawful authority to raise revenue by directly taxing the residents. Rather, the annual costs and expenses of operating the Regional are allocated among the five (5) individual participating municipalities. Of the total amount contributed by the participating municipalities, North Bergen contributes 26.2%, Union City contributed 33.45%, Weehawken contributes 14.83%, and West New York contributes 25.52%. In addition, Guttenberg contributes a flat annual rate of \$1.5 million.

The general financial underpinnings of the Regional have been fully laid out in relevant documents submitted into the record.

For the nine (9) months that the Regional operated in the year 1999, North Bergen contributed \$4,412,169, Union City contributed \$5,633,100, Weehawken contributed \$2,497,428, West New York contributed \$4,297,653, and Guttenberg

¹ With respect to item #4 below, the parties have advised me that there are no pending issues or subsequent determinations made by the DOP.

contributed \$1,375,000. For the year 2000, North Bergen contributed \$5,588,747, Union City contributed \$7,135,260, Weehawken contributed \$3,163,409, West New York contributed \$5,443,694, and Guttenberg contributed \$1,500,000. For 2001, North Bergen contributed \$5,882,892, Union City contributed \$7,510,800, Weehawken contributed \$3,329,904, West New York contributed \$5,730,204, and Guttenberg contributed \$1,500,000.

The joint contract contemplated the conveyance by sale, lease, or otherwise, of the firehouses and fire and rescue equipment owned and used by the individual municipalities in furnishing of fire protection, rescue and emergency services. The Hudson County Improvement Authority [the "Authority"] is a "public body politic and corporate constituting a political subdivision of the State of New Jersey, established as an instrumentality exercising public and essential governmental functions to provide for the public convenience, benefit and welfare of the citizens of the County."

The Authority issued and sold \$22,080,000 of "Lease Revenue Bonds, Series 1999 (North Hudson Regional Fire and Rescue Project)", consisting of \$7,010,000 principal amount of Lease Revenue Bonds, Series 1999A (North Hudson Fire and Rescue Project-Original Parties' Guaranteed Tax-Exempt Series (the "Series 1999A Bonds") and \$15,070,000 principal amount of Lease Revenue Bonds, Series 1999B (North Hudson Regional Fire and Rescue Project-Original Parties' Guaranteed Taxable Series) (the "Series 1999B Bonds"

and together with the Series 1999A Bonds, the "Series 1999 Bonds"). The Series 1999 Bonds were issued to finance, among other things, the:

(a) the acquisition of an ownership or leasehold interest in and the construction, renovation, improvement, installation, equipping and furnishing of various public Facilities (as defined herein), including real property, improvements, vehicles, equipment and other categories of personal property used by the Municipalities (as hereinafter defined) in the furnishing of fire protection, rescue and emergency services and other interrelated governmental services ... (b) funding of capitalized interest on the Series 1999 Bonds through March 1, 2001, and (c) payment of the costs and expenses of issuing the Series 1999 Bonds.

Once the Authority acquired the interest in the equipment and facilities, it agreed to lease all of the equipment and facilities to the Regional. Pursuant to the terms of the lease and agreement, the Regional agreed to make rental payments to the Authority. Payments under the lease revenue bonds continue through March 1, 2024.

The first semi-annual payment under the Series 1999A Lease Revenue Bonds due on September 1, 2001 amounts to \$187,910.63. The first semi-annual payment under the Series 1999B Lease Revenue Bonds, also due on September 1, 2001, amounts to an additional \$579,044.75. Over the next twelve (12) months alone, payments made under these bond issues will total \$1,533,916.76.

The Regional's first budget was a transitional nine month budget for April 1, 1999 through December 31, 1999. In 1999, the Regional had total revenues of \$20,126,223.36. The Regional had no cash surplus, but received \$7,500.00 from interest on investments, received \$18,215,350.00 from municipal contributions, and received \$1,903,373.36 from the State of New Jersey. In 1999, the Regional appropriated \$20,126,223.36 in the following manner: \$342,000.00 for general administration, \$22,000.00 for committee members, \$85,000.00 for financial services, \$535,000.00 for legal services, \$426,000.00 for liability insurance, \$30,000.00 for workers compensation, \$916,373.36 for employee group insurance, \$16,828,850.00 for salaries and equipment, \$350,000.00 for vehicle maintenance, \$76,000.00 for buildings and grounds, \$20,000.00 for electricity, \$5,000.00 for water, \$5,000.00 for gas, \$35,000.00 for fuel oil, \$210,000.00 for telecommunications, \$120,000.00 for social security, and \$20,000.00 for judgments and claims.

The Regional's second budget was for the Year 2000. In 2000, the Regional had total revenues of \$23,977,000.00. The Regional received \$25,000.00 from interest on investments, received \$22,831,110.00 from municipal contributions, and received \$396,625.00 from the State of New Jersey. In 2000, the Regional appropriated \$23,977,000.00 in the following manner: \$325,000.00 for general administration, \$25,000.00 for committee members, \$45,000.00 for financial services, \$460,000.00 for legal services, \$536,000.00 for liability insurance, \$100,000.00 for workers compensation, \$21,531,000.00 for

salaries and equipment, \$370,000.00 for vehicle maintenance, \$205,000.00 for buildings and grounds, \$75,000.00 for electricity, \$25,000.00 for water, \$25,000.00 for gas, \$10,000.00 for fuel oil, \$35,000.00 for telecommunications, \$10,000 for the Public Employees Retirement System, \$150,000.00 for social security, and \$50,000.00 for judgments and claims.

The Regional's third budget was for the Year 2001. For 2001, the Regional expects to have revenues of \$24,773,890.00. The Regional received \$20,000.00 from interest on investments, and received \$23,953,890.00 from municipal contributions. For 2001, the Regional appropriated \$24,773.890.00 in the following manner: \$328,500.00 for general administration, \$25,000.00 for committee members, \$40,000.00 for financial services, \$425,000.00 for legal services, \$540,000.00 for liability insurance, \$125,000.00 for workers compensation, \$22,297,890.00 for salaries and equipment, \$375,000.00 for vehicle maintenance, \$187,500.00 for buildings and grounds, \$50,000.00 for electricity, \$25,000.00 for water, \$50,000.00 for gas, \$50,000.00 for fuel oil, \$35,000.00 for telecommunications, \$10,000 for the Public Employees Retirement System, \$160,000.00 for social security, and \$50,000.00 for judgments and claims. Indeed, for the year 2001, the entire budget was funded by the municipal contributions.

The five (5) municipalities that make up the Regional have a combined population of 165,369. Individually, West New York has a population of 38,020

and land area slightly more than one square mile; Weehawken has a population of 12,715 and a land area of 0.85 square miles; North Bergen has a population of 48,639 and a land area of 5.19 square miles; Union City has a population of 57,621 and a land area of 1.27 square miles; Guttenberg has a population of 8,374 and a land area of 0.19 square miles.

The population of the Regional makes it the third (3rd) most populous political subdivision to be served by a single paid fire department placing it behind only Newark, which has a population of 267,823, and Jersey City, which has a population of 232,429.

The Regional covers a combined area of 8.52 square miles. Thus, the Regional has approximately 18,374 people per mile and is the most densely populated “municipality” to be served by a single fire department. In comparison, Atlantic City has 3,347 people per mile; Bayonne has 10,927 people per mile; Elizabeth has 8,929 people per mile; Jersey City has 15,362 people per mile; Newark has 11,558 people per mile; Patterson has 16,695 people per mile; and Trenton has 11,591 people per mile.

By all indications, the Regional is serving its purpose of providing effective and efficient fire services through serving the public from geographic locations which cross municipal lines.

THE ISSUES IN DISPUTE AND THE LAST OFFERS AND POSITIONS OF THE PARTIES

The issues in this proceeding are vast in number and scope. All of the prior agreements in the individual municipalities have been the result of decades of negotiations. The terms and conditions of employment of the Fire Officers in these municipalities differed in many key respects from one another. The Regional has hired new employees who had never been employed by any of the individual municipalities. This Award will represent the first agreement of the parties covering Fire Officers. The task of accomplishing this goal is a daunting one and has lead to dozens of issues, major and minor, remaining open despite genuine and sincere efforts toward voluntary resolution. This arbitrator respectfully commends all participants in this proceeding for their professionalism, competence, cooperation and courtesy.

It is a challenge to lay out each issue in dispute and to set forth the respective positions and arguments of the Regional and the Association on each issue along with the supporting evidence each party has submitted into the record. The sheer volume in the number of issues and the complexity of so many of them makes it virtually impossible to summarize each issue in as broad and comprehensive a manner as might be done in a more typical impasse involving a single municipality involving mere adjustments to a pre-existing contract. Other complicating factors are present. In their efforts to argue on behalf of a proposal, each party has pointed to the provisions in several different

prior agreements governing the subject matter of that particular issue. Also, each party has submitted certain proposals with different nomenclature in the subject matter headings. Another consideration is that each party has, on certain issues, accepted, rejected, and/or modified individual sections of each party's total proposals on individual topics. In other instances, each party may have made a proposal which the other party has simply rejected rather than offering a substantive counter-proposal. Wherever possible, I have provided cross-referencing on individual subjects. In the event that either party has not offered specific argument in support of the rejection of a proposal, I will treat such silence as a total rejection of the other party's proposal.

For the sake of clarity, I have laid out each party's proposal on each individual topic and have accompanied each proposal with a concise summary of argument and evidence presented on that proposal. The compensation issues which involve substantial costs have been laid out last along with a summary of the evidence and argument each party has provided referencing the relevant statutory criteria. At the end of each individual topic I have set forth what I have awarded on that issue as well as a self-contained award containing all of the issues at the end of the decision.

PREAMBLE

The **Regional** proposes the following contractual language:

This Agreement by and between North Hudson Regional Fire & Rescue, (also referred to as "Employer" or "Regional") and the North Hudson Fire Officers Association (also referred to as "Association") represents the complete and final understanding of all bargainable issues between the parties.

WITNESS TO,

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Fire Officers Association recognize and declare their mutual aim to be the promotion of an understanding, harmonious relationship between them, and

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Fire Officers Association desire that the service to the community be continuous and efficient, and

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Fire Officers Association have carried on collective bargaining and reached certain understandings which they desire to incorporate and confirm in this Agreement, be it

RESOLVED, in consideration of the following covenants it is mutually agreed as follows:

The **Association** proposes the following contractual language:

This Agreement entered into this ____ day of _____, 199____, by and between the NORTH HUDSON REGIONAL FIRE AND RESCUE DISTRICT hereinafter called the employer, and the NORTH HUDSON FIRE OFFICERS ASSOCIATION, duly appointed representative of all full time ranks above the rank of Fire Chief employed by the employer.

The parties have stipulated to the following Preamble and that stipulation is awarded:

This Agreement by and between North Hudson Regional Fire & Rescue, (also referred to as "Employer" or "Regional") and

the North Hudson Fire Officers Association (also referred to as "Association").

WITNESS TO,

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Fire Officers Association recognize and declare their mutual aim to be the promotion of an understanding, harmonious relationship between them, and

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Fire Officers Association desire that the service to the community be continuous and efficient, and

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Fire Officers Association have carried on collective bargaining and reached certain understandings which they desire to incorporate and confirm in this Agreement, be it

RESOLVED, in consideration of the following covenants it is mutually agreed as follows:

ASSOCIATION RECOGNITION CLAUSE

The **Regional** proposes the following contractual language:

Section 1.0: North Hudson Regional Fire & Rescue, pursuant to the recognition granted by the Public Employees Relations Commission, recognizes North Hudson Fire Officers Association as the exclusive representative of employees in classifications covered by the contract. This contract shall apply to all permanent employees working in the classifications listed below, and to any other classification which may be established within the scope of the duties now included within these classifications: Lieutenants, Captains, Battalion Chiefs and Deputy Chiefs.

The **Association** proposes the following contractual language:

North Hudson Regional Fire & Rescue, pursuant to the recognition granted by the Public Employment Relations Commission, recognizes North Hudson Fire Officers Association as the exclusive representative of employees in classifications covered by the

contract. The appropriate negotiations unit shall be that specified in the March 16, 1999 Certification of Representative issued by the Public Employment Relations Commission to the North Hudson Fire Officers Association.

The parties have stipulated to the following Recognition Clause and that stipulation is awarded:

North Hudson Regional Fire & Rescue, pursuant to the recognition granted by the Public Employees Relations Commission, recognizes North Hudson Fire Officers Association as the exclusive representative of employees in classifications covered by the contract. This contract shall apply to all permanent employees working in the classifications listed below, and to any other classification which may be established within the scope of the duties now included within these classifications: Lieutenants, Captains, Battalion Chiefs and Deputy Chiefs.

MANAGEMENT RIGHTS

The **Regional** proposes the following contractual language:

Section 2.0: North Hudson Regional Fire & Rescue hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the laws and Constitutions of the State of New Jersey and of the United States, including, but not limited the following:

Section 2.1: The executive management and administrative control of the Regional and its properties, facilities and activities of its employees utilizing personnel methods and means of the most appropriate and efficient manner possible as may from time to time be determined by the Regional.

Section 2.3: To make rules of procedure and conduct, to use improved methods and equipment, as well as duties to decide the number of employees needed for any particular time and to be in sole charge of the equality and quantity of the work required.

Section 2.4: To hire all employees, whether permanent, temporary, or seasonal, to promote, transfer, assign or retain employees in positions within North Hudson Regional Fire & Rescue subject to Civil Service law.

Section 2.5: To suspend, demote, discharge or take any other appropriate disciplinary actions against any employee.

Section 2.6: To lay off employees in the event of lack of funds or under conditions where continuation of such work would be inefficient and non-productive.

Section 2.7: The exercise of the above powers, rights, authority, duties and responsibilities and the use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms of this Agreement and then only to the extent such specific and express terms are in conformance with the Constitutions and laws of New Jersey and of the United States.

The Association rejects the Regional's proposal and does not propose to include any management rights provision into the agreement.

The Regional acknowledges that a management rights clause that waives the statutory obligation to negotiate work rules is not negotiable, but denies that its proposal includes such waiver. Township of Branchburg, P.E.R.C. No. 89-20, 14 NJPER 571 (¶19240 1982); Borough of Mountainside, P.E.R.C. No. 83-94, 14 NJPER 81 (¶14044 1982). The Regional urges adoption of its management rights provision because it comprehensively sets forth its rights and the Union did not provide testimony at the hearing objecting to this proposal.

In the absence of detailed objection to the specifics of the Regional's proposal, a management rights clause identical to that awarded today in the

companion award covering the Regional's Firefighters is awarded for the Regional and its Fire Officers. Accordingly, the management rights clause shall provide as follows:

Section 2.0: North Hudson Regional Fire & Rescue hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the laws and Constitutions of the State of New Jersey and of the United States, including, but not limited the following:

Section 2.1: The executive management and administrative control of the Regional and its properties, facilities and activities of its employees utilizing personnel methods and means of the most appropriate and efficient manner possible as may from time to time be determined by the Regional.

Section 2.3: To make rules of procedure and conduct, subject to N.J.S.A. 13A:5-1 et. sec., to use improved methods and equipment, as well as duties, to decide the number of employees needed for any particular time and to be in sole charge of the equality and quantity of the work required.

Section 2.4: To hire all employees, whether permanent, temporary, or seasonal, to promote, transfer, assign or retain employees in positions within North Hudson Regional Fire & Rescue subject to Civil Service law.

Section 2.5: To suspend, demote, discharge or take any other appropriate disciplinary actions against any employee.

Section 2.6: To lay off employees in the event of lack of funds or under conditions where continuation of such work would be inefficient and non-productive consistent with the provisions of civil service law.

Section 2.7: The exercise of the above powers, rights, authority, duties and responsibilities and the use of judgment and discretion in connection therewith, shall be limited by the terms of this Agreement and then only to the extent that such terms are in conformance with the Constitutions and laws of New Jersey and of the United States.

The exercise of any management rights set forth herein shall be consistent with the terms of this Agreement.

ASSOCIATION RIGHTS

The **Regional** proposes the following contractual language:

Section 3.1: Association Leave

North Hudson Regional Fire & Rescue agrees to release designated Association representatives, not to exceed one on duty at one time, for a total of forty-eight (48) hours per year for the purpose of ascertaining whether or not this agreement is being violated. This release time shall not include the time specifically provided for below, which time shall be in addition to the above.

Section 3.2:

The Regional shall grant time, if on duty, to the Association President to attend monthly meetings of the North Hudson Fire Officers Association for the period of time such meetings shall last.

Section 3.3: IAFF & FMBA Conventions

One bargaining unit member may have time off, if on duty, to attend the annual convention of either the IAFF or FMBA for the period of the convention. The Association is permitted to send one member to each convention or two members to one convention for the period of the convention. The Association will designate in writing who will attend the convention ten (10) days prior to the date of the convention. All arrangements for taking time off under this Section will be cleared with the Executive Director or his designee. Whenever a duly authorized representative of the Association exercises his right to attend such convention, the department's vacation schedule for that time period shall be adjusted to reflect such leave so as to avoid the unnecessary expenditure of overtime.

Section 3.4: Names of Association Representatives

A written list of the names of Association officers of the newly formed bargaining agent, as per PERC, will be furnished to the

Employer, and the Association shall notify the Employer of any change.

Section 3.5: Requests for Association Leave.

All requests for Association leave shall be submitted in writing by the Association through the chain of command to the Executive Director no later than 14 calendar days prior to the requested date. This advance notice period may be waived under extenuating circumstances.

In the event of negotiations or for purposes of grievance meetings, reasonable leave will be granted. No more than (1) regular member of the bargaining unit may attend these meetings while on duty without loss of compensation. The member will remain available for emergency call during this time period.

The **Association** proposes the following contractual language:

- A. The Association shall be entitled to one hundred (100) tours per year for attendance at Association business. The use of said time off shall be continued only on prior notification by the Association President, or the President's designee, to the appropriate Tour Commander(s). Said use of time off shall be denied only in the event of a clear and present danger confronting the Fire Department.

Said Association business time shall not be diminished by time spent at meetings which are scheduled by or with the Employer.

- B. The Employer shall provide an office for the sole and exclusive use by the Association. Said office shall be of reasonable size and condition and shall be located in a Fire Department building.
- C. The Employer shall, in addition to Paragraph A of this Article, provide one tour per month of time off for two FMBA and two IAFF Delegates.

The Association urges adoption of its Association Business proposal, which combines provisions for time off for union business from the various

previous contracts. According to the Association, 100 tours of duty off for Association business per year is a reasonable number in light of the necessity to conduct business in a complex and novel environment. The Association maintains that it is extremely difficult to meet the organizational needs of this new entity without reasonable time off. The Association notes that 100 tours of duty averages to less than one day off per year for Association business per union member. The Association also notes that the provisions regarding office space are already in place and it simply seeks to memorialize the existence of an employer-supplied office for the future. The Association points out that personnel working in the union office are subject to call.

According to the Association, the Regional has not opposed the Association Business proposal, but has proposed alternative language regarding office space and has added a provision covering Association bulletin boards.

The Regional acknowledges that leaves of absence and release time for representational purposes are mandatorily negotiable. Town of Kearny, P.E.R.C. NO. 2001-58, 27 NJPER 189 (¶ 32063). See also Town of Kearny, P.E.R.C. NO. 82-12, 7 NJPER 456 (¶ 12202 1981); Town of Kearny, P.E.R.C. NO. 81-70, 7 NJPER 14 (¶ 12006 1980); Town of Kearny, P.E.R.C. NO. 81-23, 6 NJPER 431 (¶ 11218 1981). However, the Regional emphasizes the finding of Hudson County's Assignment Judge, the Honorable Arthur D. Italia, that the firemen and police officer convention leave statutes-- N.J.S.A. 40A:14-177 and N.J.S.A.

11A:16-10 are unconstitutional because they violate the New Jersey Constitutional prohibition against special legislation benefiting private groups. New Jersey State Firemen's Mutual Benevolent Association, et al v. North Hudson Regional Fire & Rescue, Docket No. L-6510-99 (2000). Since that ruling, the Regional acknowledges that PERC has held that even if the statutes were held unconstitutional by the Appellate Division, employers may still legally agree to provide convention leave through collective negotiations. Township of Kearny, P.E.R.C. NO. 2001-58, 27 NJPER 189 (¶ 32063), *supra*. The Regional notes that subsequently, the Appellate Division, in New Jersey State Firemen's Mutual Benevolent Association, et al v. North Hudson Regional Fire & Rescue, Docket No. A-3827-99T1 (May 15, 2001), affirmed the trial court's determination and held that the convention leave statutes were an unconstitutional delegation of legislative authority.

Addressing the Association's argument that they should be entitled to paid conventional leave even though the statutes were declared unconstitutional because the Fire Officers received this benefit when they were employed by the individual participating municipalities, the Regional reiterates that it is a new employer separate from the four municipalities and should not be bound by the previous agreements. Additionally, the Regional emphasizes that Fire Officers are only scheduled for approximately ninety-one (91) tours each year, less vacation, and other leave time and therefore additional leave time is unnecessary. The Regional also notes that it provides all the necessary training

for its Fire Officers and those who wish to attend the various conventions have other mechanisms such as vacation time and voluntary shift exchanges.

The North Bergen agreement provided time off for up to two union officials to attend IAFF international, state and first district conventions. Similarly, the West New York agreement provided up to three union officials with time off to attend the AFL-CIO and the IAFF international conventions, as well as the AFL-CIO and IAFF state conventions and the IAFF first district convention. Under the North Bergen agreement, one calendar day before and after the international convention was allotted for travel time. Under the West New York agreement, up to one calendar day before and after the conventions was permitted.

The North Bergen and West New York agreements also provided that union representatives could visit fire headquarters, fire houses and the office of the fire director for purposes of ascertaining compliance with the agreement. Additionally, the North Bergen, Union City and West New York agreements provided that the Union President received leave for union business with the permission of the employer.

The North Bergen, Weehawken and West New York agreements also provided that at least two union officials would be provided time off to participate in funeral services.

Although the Regional is a new employer, the fact of regionalization should not serve to eliminate the benefit of leave for Association Business. Given that at least two of the previous agreements provided for leave to attend union conventions, such leave should not be abandoned in this Agreement merely because the benefit is no longer required by statute as long as an award on that issue does not include the references which made the statute unconstitutional. Both parties have proposed some provision for time as did the predecessor municipal agreements. However, I conclude that the Regional's proposal is unduly restrictive, while the Association's proposal is overly broad. In order to maintain the orderly operations of the Department, the Regional is entitled to both notice and limitations on the use of time for Association business. There should also be some consistency between the Fire Officer and Firefighter units and each of their proposals have been evaluated with that principal in mind. The award covering Association Business for Fire Officers is generally consistent with the similar provision included in the award covering the Regional and its Firefighters and does not diverge widely from the terms the predecessor agreements. The Association's proposal covering office space is addressed separately. Accordingly, the following provisions covering Association Business are awarded:

Employees, not to exceed three (3) who are elected officers, delegates, trustees and/or alternates of the Union or who have been elected to State or international office, shall be granted time off from normal duties to attend the following designated conventions:

IAFF or FMBA International Convention
IAFF or FMBA State Convention
IAFF or FMBA District Convention

The time off granted shall not be more than the length of the convention plus, in the event that the event is outside the State of New Jersey, one calendar day before and one calendar day after, in any event, not to exceed one (1) 24-hour tour per employee. The Association will designate in writing who will attend each convention ten (10) days prior to the date of the convention. All arrangements for taking time off under this Section will be cleared with the Executive Director or his designee. Whenever a duly authorized representative of the Association exercises his right to attend such convention, the department's vacation schedule for that time period shall be adjusted to reflect such leave so as to avoid the unnecessary expenditure of overtime.

The Employer will permit up to two (2) authorized Association representatives reasonable time off with pay to attend to Association business, including to investigate and seek to settle grievances and to attend all meetings and conferences on collective negotiations with departmental officials provided the Association gives reasonable notice to the department in advance.

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

- a. Subject to the availability of same the Employer will permit a fire department vehicle to be utilized by the Association for the above-referenced funeral service.

Authorized representatives of the Association shall be permitted to visit Fire Headquarters, Firehouses or the office of the Fire Director for the purposes of ascertaining whether or not this agreement is being observed.

A written list of the names of Association officers of the newly formed bargaining agent, as per PERC, will be furnished to the Employer, and the Association shall notify the Employer of any change.

OFFICE SPACE

The **Regional** proposes the following contractual language:

The Employer agrees to provide office space for the purpose of conducting Association business in the Regional, provided that this shall not interfere with or interrupt normal fire operations.

The **Association** proposes the following contractual language in its provision covering Association business:

The Employer shall provide an office for the sole and exclusive use by the Association. Said office shall be of reasonable size and condition and shall be located in a Fire Department building.

The Regional notes that office space for union purposes is a non-economic mandatorily negotiable subject, unless providing office space would require spending capital funds. Somerset County, P.E.R.C. NO. 91-119, 17 NJPER 344 (¶ 22154 1991), citing Garfield Br. of Ed., P.E.R.C. NO. 90-48, 16 NJPER 6 (¶ 21004 1989). The Regional points out that its proposal and the Association's are very similar except that the Regional has included very important contractual language; namely, "this shall not interfere with or interrupt normal fire operations." According to the Regional, this language must be included in the new collective negotiations agreement to make clear that while the Regional will provide office space, that office space will be located where it would not interfere with or interrupt normal fire operations. The Regional contends that any other provision would be contrary to the its managerial prerogative because the Regional would be required to maintain Association

offices in a certain location even though the Regional might have a different need for that specific office space.

As stated, the Regional agrees to provide office space for the purpose of conducting Association business, but seeks a provision that would provide the Association with an office, but would not limit it to its present location or one which would interfere with normal fire operations. The following provision balances the Association's need for reasonable office space with the Regional's need to ensure that the location will not interrupt to normal fire operations:

The Employer shall provide an office for the sole and exclusive use by the Association. This office shall be of reasonable size and condition and shall be located in a Fire Department building in a location that shall not interfere with or interrupt normal fire operations.

BULLETIN BOARDS

The **Regional** proposes the following contractual language:

The Regional shall furnish space for bulletin boards for the purpose of Association notices in a conspicuous location at each firehouse and at the Dispatcher's Office. Notices shall not contain anything reflecting adversely on the Regional or any of its officers and no material, notices or announcements which violate the provisions of this Agreement shall be posted. Material posted shall be subject to review by the Executive Director or his designee. Notices posted must be dated and bear the signature of the Association President or his authorized representative.

Noting that the Association's use of a bulletin board on an employer's premises is a mandatorily negotiable subject, the Regional points out that the Association did not propose a provision covering bulletin boards and urges the adoption of its proposal.

I note that the Regional and the Firefighters agreed to language covering the provision and use of bulletin boards. In order to maintain consistency between the negotiations units, where appropriate, that stipulation shall be awarded to the Fire Officers as well.

- A. The Employer will supply one (1) bulletin board for the use of the Association to be placed in a conspicuous location at each firehouse.
- B. The bulletin board shall be for the use of the Association and for posting notes and bulletins pertaining to the Association's business activities or matters dealing with the welfare of the employee.

ORGANIZATIONAL RIGHTS

The **Association** proposes the following contractual language:

- A. The Association shall be informed and consulted prior to promulgation of any new rule or the proposed modification of any present rule, said notice to the organization shall be given no later than fourteen (14) calendar days before the effective date of any change. In the event the Association desires to exercise its rights pursuant to law such rule or regulation shall not become effective until the parties have exhausted all remedies provided by law.

- B. The employer shall not enter into a contractual agreement with an Association member which in any way alters, reduces, compromises, amends or conflicts with the terms and provisions of this Agreement and the rights and privileges conferred pursuant to this Agreement.
- C. Consistent with law, necessary time off without loss of pay or benefits and without discrimination shall be granted to any employee officially designated by the Association to attend local or state meetings, conventions or to serve in any capacity or other Association business, provided twenty-four (24) hours notice is given to the Employer by the Association.

The Association points out that its proposal with respect to organizational rights is a combination of contract language from the previous agreements. According to the Association, this provision, which includes notice of rule changes, exclusivity of contract and release time for contract administration purposes, does not represent disparate terms from previous contract terms. The Association points to the provision in N.J.S.A. 34:13A-5.3 that provides for the negotiation of new rules or the modification of existing rules. The Association acknowledges that there may be instances where the Regional must act without notice. The Association also points out that there is a longstanding practice of release for union business and the current practice with respect to local meetings is incorporated by reference in its proposed language.

Citing PERC's finding on the negotiability of part A of this proposal, the Regional urges denial of this proposal in its entirety. According to the Regional, in North Hudson Regional Fire and Rescue, P.E.R.C. NO. 2000-78, 27 NJPER 184 (¶ 31075 2000), PERC held that the first sentence of the Association's

proposal is mandatorily negotiable in the abstract. Specifically, PERC found that “[e]mployees have an interest in knowing what the employer’s rules are and providing such notice does not generally trench on the employer’s prerogative to adopt them.” *Id.* at 185. However, the Regional emphasizes that PERC found that the second sentence of the Association’s proposal would significantly interfere with the Regional’s right to establish rules on discipline, performance and other subjects that were not mandatorily negotiable. Accordingly, the Regional urges rejection of the entire provision.

In its proposal, the Association seeks to (1) regulate the negotiations over new rules and regulations; (2) reiterate the principle of exclusivity; and (3) provide for leave to attend union conventions. First, PERC has found that the second sentence of Part A of the Association’s proposal is not mandatorily negotiable and it is not awarded. However, PERC also found the provision requiring notice prior to the promulgation of a new rule or the modification of an existing rule to be mandatorily negotiable. The Association’s proposal with modification to allow the Regional action in “exigent circumstances” is awarded herein. Part B of the Association’s proposal reiterates statutory rights. Absent a specific objection by the Regional, it is awarded. The issue of leave to attend union conventions is addressed in the section titled “Association Business” and is not reviewed or included here.

Accordingly, the Organizational Rights provision shall be as follows:

- A. Except in exigent circumstances, the Association shall be informed and consulted prior to promulgation of any new rule or the proposed modification of any present rule, said notice to the organization shall be given no later than fourteen (14) calendar days before the effective date of any change.
- B. The employer shall not enter into a contractual agreement with an Association member which in any way alters, reduces, compromises, amends or conflicts with the terms and provisions of this Agreement and the rights and privileges conferred pursuant to this Agreement.

DEDUCTIONS FROM SALARY

The **Regional** proposes the following contractual language:

Section 3.6: North Hudson Regional Fire and Rescue agrees to deduct from the salaries of its employees subject to this agreement dues for the Association. Such deductions shall be made in compliance with *N.J.S.A. 52:14.9e*, as amended. Such monies together with any records of corrections shall be transmitted to the Union Office.

Section 3.7: Any permanent employee in the bargaining unit on the effective date of this Agreement who does not join the Association within thirty (30) days thereafter, any new permanent employee who does not join within thirty (30) days of initial employment within the unit, and any permanent employee previously employed within the unit who does not join within ten (10) days of re-entry into employment with the unit shall, as a condition of employment, pay a representation fee to the Association by automatic payroll deduction. The representation fee shall be in an amount equal to eighty-five (85%) percent of the regular Association membership dues, fees and assessments as certified to the Employer by the Association. The Association may revise its certification of the amount of the representation fee at any time to reflect changes in the regular Association membership dues, fees and assessments as certified to the Employer by the Association. The Association's entitlement to the representation fee shall continue beyond the termination date of this Agreement, so long as the Association remains the majority representative of the employees in the unit,

provided that no modification is made in this provision by a successor agreement between the Association and the Employer. The Association shall establish and/or advise the Employer that it has established a demand and return system in accordance with *N.J.S.A. 34:13A-5.5*.

Section 3.8: The Association will annually provide the necessary "check-off authorization" form and deliver the signed forms to the Executive Director. The Association shall indemnify, defend and hold the Regional harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of action taken by the Regional in reliance upon the salary deduction authorization cards submitted by the Association to North Hudson Regional Fire & Rescue.

The **Association** proposes the following contractual language:

- A. Upon the Director receiving the written voluntary authorization and assignment of a Fire Supervisor covered by this Agreement (in the form agreed upon between the Employer and the Association consistent with applicable Law), the employer agrees to deduct from the pay periods of each month, membership dues, fees and assessments, in such amounts as shall be fixed pursuant to the By Laws and Constitution of the Association during the full term of this Agreement and any extension or renewal thereof. The Employer shall promptly remit monthly any and all amounts so deducted with a list of changes to the Secretary Treasurer of the Association.
- B. Any changes in monthly dues will be certified in writing by the President of the Association or his/her designee, and the amount shall be uniform for all members.
- C. No deductions will be made for any month in which there is not sufficient pay available to cover the same after all other deductions required by law have been made. Deductions for a prior month's dues will not be made in respect to such dues, except where the employer, through error or oversight, failed to make the deduction on any monthly period.
- D. The employer will notify the Secretary-Treasurer of the Association of any newly appointed Fire Supervisor's classification and rate of pay. The employer will similarly

notify the Secretary-Treasurer of the Association of all Fire Supervisors who are terminated from the employer's payroll.

- E. The employer agrees to deduct the fair share fee from the earnings of these Fire Supervisors who elect not to become members of the Association and transmit the fee to the Treasurer of the Fire Superior Officers Association. This fee shall be 85% of the total union dues plus any assessments for that year. The Association will notify the Employer in writing of the costs of the dues and assessments.
- F. The deduction shall commence for each Supervisor who elects not to become a member of the Association on the first of the month following thirty (30) days written notice from the Association of the amount of the fair share assessment. The deduction shall commence for each Fire Supervisor on the first of the month following sixty (60) days of employment.
- G. The fair share fee for services rendered by the Association shall be in the amount equal to the regular membership dues, initiation fees and assessments of the Association, less the cost of benefits financed through the dues available only to members of the Association, but in no event shall the fee exceed eighty-five (85%) percent of the regular membership dues, fees and assessments.
- H. Membership in the Association is separate, apart and distinct from the assumption by one of the equal obligations to the extent that he/she has received equal benefits. The Association is required under this Agreement to represent all of the Supervisors in the bargaining unit fairly and equally, without regard to Association membership. The terms of this Agreement have been made for all Fire Supervisors in the Bargaining Unit, and not only for members in the Association and this Agreement has been executed by the employer after it had satisfied itself that the Association is a proper majority representative.

The Association proposes adoption of its dues deduction language, which is taken from the Union City Fire Supervisors agreement. The Association points out that the Regional is deducting union dues and paying them to the Association

at present. The Association also points out that each of the prior contracts provided for dues deduction and implementation of its proposed language would not have a negative impact upon the Regional.

The Regional urges adoption of its proposal because such language regarding deductions from salary is not mandatorily negotiable. According to the Regional, the establishment of business practices for deductions from employee's salaries is a managerial prerogative. The Regional asserts that the Association has not considered its administrative concerns and its proposal addresses those concerns and should be adopted.

Consideration of this issue must include the Regional's ability to administer dues deduction on a consistent basis. The agreement reached between the Regional and the Firefighters addresses the Regional's and the Association's administrative concerns and its extension to the Fire Officers will enhance consistency between the bargaining units. Accordingly, that dues deduction provision is awarded here as well:

1. North Hudson Regional Fire and Rescue agrees to deduct from the salaries of its employees subject to this agreement dues for the Association. Such deduction shall be made in compliance with N.J.S.A. 52:14.9e, as amended. Such monies together with any records of corrections shall be transmitted to the Union Office.
2. Any employee in the bargaining unit on the effective date of this Agreement who does not join the Association within thirty (30) days thereafter, any new employee who does not

join within thirty (30) days of initial employment within the unit, and any employee previously employed within the unit who does not join with ten (1) days of re-entry into employment with the unit shall, as a condition of employment, pay a representation fee to the Association by automatic payroll deduction.

The representation fee shall be in an amount equal to eighty-five (85%) percent or whatever is permitted by law, of the regular Association membership dues, fees and assessments as certified to the employer by the Association. The Association may revise its certification of the amount of the representation fee at any time to reflect changes in the regular Association membership dues, fees and assessments as certified to the Employer by the Association. The Association's entitlement to the representation fee shall continue beyond the termination date of this agreement, so long as the association remains the majority representative of the employees in the unit, provided that no modification is made in this provision by a successor agreement between the Association and the Employer. The Association shall establish and/or advise the Employer that it has established a demand and return system in accordance with N.J.S.A. 34:13A-5.5.

3. The Association will annually provide the necessary "check-off authorization" form and deliver the signed forms to the Executive Director. The Association shall indemnify, defend and hold the Regional harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of action taken by the Regional in reliance upon the salary deduction authorization cards submitted by the Association to North Hudson regional Fire & Rescue.

4. Changes:

The Association will notify the employer in writing of any changes in the list provided for in paragraph 1 above and/or the amount of the representation fee, and such changes will be reflected in any deductions made more than twenty-one (21) days after the Employer received said notice.

5. New Employees:

On or about the last day of each month, beginning with the month this Agreement becomes effective, the Employer will

submit to the Association, a list of all employees who began their employment in a bargaining unit position during the preceding 30 day period. The list shall include name, dates of employment, their address, birth date, classification, and rate of pay. The Department will similarly notify the Association of all Employees who are terminated from the Employer's payroll.

6. The Association shall indemnify, defend and save the Department harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the Department in reliance upon salary deduction authorization cards and submitted by the Association to the Department or in reliance upon the official notification on the letterhead of the Association and signed by the President of the Association advising of such changed deduction.
7. The Association shall establish and maintain a procedure whereby any employee can challenge the assessment as computed by the Association. This appeal procedure shall in no way involve the Department or require the Department to take any action other than to hold the fee in escrow pending resolution of the appeal.

RIGHTS OF MEMBERS

The **Association** proposes the following contractual language:

Pursuant to Chapter 303, Public Laws of 1968, the employer hereby agrees that every Fire Officer shall have the right freely to organize, join and support the Association and its affiliates for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As a body exercising governmental power under the laws of the State of New Jersey, the employer undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any Fire Officer in the enjoyments of any rights conferred by Chapter 303, Public Laws of 1968 or other Laws of New Jersey or the Constitution of New Jersey and the United States; that it shall not discriminate against any employee with respect to hours, wages or any terms or conditions of employment by reason of his membership in the Association and its affiliates, his participation in any activities of the

Association and its affiliates, collective negotiations with the Employer, or his institution of any grievance, complaint or proceeding under this Agreement or otherwise with respect to any terms and conditions of employment.

Elected representatives or those appointed by the President of the Association shall be permitted time off to attend negotiating sessions, grievance sessions, and meetings of the joint Association Management Committee and meetings or sessions which might affect the rights and/or obligations of any Officer. There will be a maximum of three (3) members at such sessions or meetings.

Seniority shall prevail in choice of shifts, (if applicable) vacations, holidays or in the event of layoff.

A Fire Officer shall be granted time to eat during his/her tour of duty, except in the case of unusual or emergency situations.

The employer and the Association agree that there shall be no discriminating against any employee because of race, creed, color, age, religion, sex, national origin or political affiliation.

The employer and the Association agree that all members covered under this Agreement have the right without fear of penalty or reprisal to form, join and assist any employee organization or to refrain from any such activity. There shall be no discrimination by the employer or the Association against any employee because of the employee's membership or non-membership or activity or non-activity in the Association.

The Association characterizes its Rights of Members proposal as "boiler plate" that acknowledges the parties' statutory obligations with respect to non-discrimination and free participation without fear of retaliation. The Association points out that paragraphs three and four memorialize current employee rights. According to the Association, seniority is used to determine selection wherever possible, including that persons of equal entitlement currently select vacation by seniority. The Association also notes that Fire Officers are permitted to eat during a tour of duty. In support of this proposition, the Association points to

Captain Joseph Zavardino's testimony that, "...we have to maintain a 24 hour shift and we have to eat there, so we have our lunch and our dinner and we cannot go home."

According to the Association, the additional language it proposes simply confirms long standing practices and procedures. The Association adds further that this proposal best serves the public interest by resolving issues at the outset and stating rights so as to protect its members and to protect the public interest. Accordingly, the Association maintains that this language should be read to cover shift bidding by seniority. The Association notes that shift bidding by seniority has been in practice in most of the individual departments and should be easily accommodated by the Regional.

The Regional points out that the parties have agreed upon the following non-discrimination language:

In accordance with applicable state and federal law, neither the Regional nor the Association shall discriminate against any employees covered by this agreement because of race, color, sex, religion, national origin, or Association membership.

Additionally, the Regional notes that it has proposed a seniority section that would provide that seniority should govern only in case of layoffs. The Regional urges adoption of that proposal because it contends that the Association's proposal interferes with managerial discretion citing the Matter of City of the City of Plainfield and Plainfield PBA, Local 19 and Plainfield Superior

Officers, 26 NJPER 31071 (March 31, 2000). According to the Regional, it has the managerial right to properly man its shifts with those Fire Officers it deems necessary.

To the extent that the Rights of Members provision proposed by the Association affirms rights provided by the New Jersey Employer-Employee Relations Act, it is awarded. The Association's proposals addressing time off for grievance administration, as well as its seniority proposal, are covered in the Association Rights and Seniority provisions respectively and are not addressed or awarded here. The Association's meal time proposal codifies a practice, and in the absence of objection by the Regional, it is awarded. The non-discrimination provision has been agreed to by both parties and is included in a section titled "Non-Discrimination" and is not included here. Accordingly, the following provisions covering the Rights of Members is awarded:

Pursuant to Chapter 303, Public Laws of 1968, the employer hereby agrees that every Fire Officer shall have the right freely to organize, join and support the Association and its affiliates for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As a body exercising governmental power under the laws of the State of New Jersey, the employer undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any Fire Officer in the enjoyments of any rights conferred by Chapter 303, Public Laws of 1968 or other Laws of New Jersey or the Constitution of New Jersey and the United States; that it shall not discriminate against any employee with respect to hours, wages or any terms or conditions of employment by reason of his membership in the Association and its affiliates, his participation in any activities of the Association and its affiliates, collective negotiations with the Employer, or his institution of any grievance, complaint or

proceeding under this Agreement or otherwise with respect to any terms and conditions of employment.

A Fire Officer shall be granted time to eat during his/her tour of duty, except in the case of unusual or emergency situations.

The employer and the Association agree that there shall be no discriminating against any employee because of race, creed, color, age, religion, sex, national origin or political affiliation.

The employer and the Association agree that all members covered under this Agreement have the right without fear of penalty or reprisal to form, join and assist any employee organization or to refrain from any such activity. There shall be no discrimination by the employer or the Association against any employee because of the employee's membership or non-membership or activity or non-activity in the Association.

SENIORITY

The **Regional** proposes the following contractual language:

Section 5.0: Seniority is defined to mean the accumulated length of service in the highest attained grade, with North Hudson Regional Fire & Rescue and any prior accumulated service with the fire departments of the City of Union City, Township of Weehawken, Town of West New York, Township of North Bergen, and Guttenberg. Seniority is not counted for time when an employee is on a layoff. Outside the exception stated above, a resignation and rehire creates a new hiring date. An employee's length of service shall not be reduced by time lost due to an injury or illness in the line of duty.

Section 5.1: Seniority principles shall apply to employees covered by this Agreement with respect to layoff and recall from layoff as prescribed by Department of Personnel's rules and regulations in this area.

The Association has not proposed a "Seniority" section per se. However, it proposes in its "Rights of Members" Article that "Seniority shall prevail in choice

of shifts (if applicable) vacations, holidays or in the event of layoff.” The Regional urges adoption of its proposal because the Association’s proposal is asserted to interfere with managerial discretion. In the Matter of City of the City of Plainfield and Plainfield PBA, Local 19 and Plainfield Superior Officers, 26 NJPER 31071 (March 31, 2000). The Regional asserts that it has the managerial right to properly man its shifts with those Fire Officers it deems necessary and appropriate. Thus, the Regional asserts, the only provision that should be governed by seniority is layoffs.

The Association responds that its proposal would simply memorialize the current practice of bidding for shifts by seniority.

The Association’s proposal would contractually extend the use of seniority to shift bidding which it claims has been recognized in some of the municipal fire departments before regionalization. The Regional and its Firefighters have stipulated to a seniority provision mirroring the Regional’s proposal. In the interest of maintaining consistency between the bargaining units where appropriate to assure the continuity and stability of employment, similar language is awarded here.

Section 5.0: Seniority is defined to mean the accumulated length of service in the highest attained grade, with North Hudson Regional Fire & Rescue and any prior accumulated service with the fire departments of the City of Union City, Township of Weehawken, Town of West New York, Township of North Bergen, and Guttenberg. Seniority is not counted for time when an employee is

on a layoff. Outside the exception stated above, a resignation and rehire creates a new hiring date. An employee's length of service shall not be reduced by time lost due to an injury or illness in the line of duty.

Section 5.1: Seniority principles shall apply to employees covered by this Agreement with respect to layoff and recall from layoff as prescribed by Department of Personnel's rules and regulations in this area.

The seniority list shall be supplied to the Association in January of each year.

GRIEVANCE PROCEDURE

The **Regional** proposes the following contractual language:

Section 4.0: The purpose of this procedure is to secure, at the lowest possible level, an equitable solution to the problems which may arise affecting the terms and conditions of employment under this Agreement.

Section 4.1: Nothing herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the Department.

Section 4.2: A grievance is defined as a complaint arising out of a claimed violation, misinterpretation or inequitable application of the provisions of this contract.

Section 4.3: The following constitutes the sole and exclusive method for resolving differences between the parties covered by this Agreement, and shall be followed in its entirety unless any step is waived by mutual consent.

Section 4.4: The time limits expressed herein shall be strictly adhered to. If any grievance has not been initiated within the time limits specified, then the grievance shall be deemed to have been abandoned. If the grievance is not processed to the next succeeding step in the grievance procedure within the time limits prescribed thereunder, then the disposition of the grievance at the last preceding step shall be deemed to be conclusive. If a decision is not rendered within the time limits prescribed for decision at any

step in the grievance procedure, then the grievance shall be deemed to have been denied. Nothing herein shall prevent the parties from mutually agreeing to extend or contract the time limits for processing the grievance at any step in the grievance procedure.

Step One

Section 4.5: The aggrieved or the Association shall institute action under this provision within eight (8) calendar days after the event giving rise to the grievance has occurred and the aggrieved person knew or should have known of the event or events upon which the claim is based. An earnest effort shall be made to settle the differences between the aggrieved employee and his immediate supervisor for the purpose of resolving the matter informally. Such grievance must be presented within this time period or such grievance shall be deemed waived.

Step Two

Section 4.6: If no agreement can be reached orally within five (5) calendar days of the initial discussion with the immediate supervisor, the employee or the Association may present the grievance in writing within ten (10) calendar days thereafter to the Executive Director or his designated representative. The written grievance at this step shall contain, without prejudice to either party, the relevant facts and a summary of the preceding oral discussion, the applicable section(s) of this contract violated, and the remedy request by the grievant.

Section 4.7: The Executive Director shall respond, in writing, to the grievance within five (5) calendar days of the submission.

Step Three

Section 4.8: If the Association or the grievant wishes to appeal the decision of the Executive Director, such appeal shall be presented in writing to the Executive Director within five (5) calendar days or be deemed waived. This presentation shall include copies of all previous correspondence relating to the matter in dispute. The Executive Director shall respond, in writing, to the grievance within fifteen (15) calendar days of the submission. With respect to a disciplinary action imposed on an employee of less than forty-eight hours (48) pay affecting one employee, the Executive Director's decision shall be final and not subject to step four.

Step Four

Section 4.9: If the grievance is not settled through Steps One, Two and Three, either party shall have the right to submit the dispute to binding arbitration within fifteen (15) days pursuant to the rules and regulations of the Public Employment Relations Commission. Grievances concerning the imposition of discipline of less than forty-eight hours (48) pay affecting one employee shall not be arbitrable. An arbitrator, who is a member of the panel of New Jersey Public Employee Relations Commission, will be mutually agreed upon by the parties. The costs for the services of the arbitrator shall be borne equally by North Hudson Regional Fire & Rescue and the North Hudson Fire Officers Association.

Section 4.10: Any other expenses, including, but not limited to, the presentation of witnesses, shall be paid by the parties incurring same.

Section 4.11: The arbitrator shall be bound by the provisions of this Agreement and the Constitution and Laws of the State of New Jersey, and be restricted to the application of the facts presented to him involved in the grievance. No more than one (1) issue may be submitted to the arbitrator at one (1) time unless arising out of the same facts or agreed in writing by both parties. Multiple grievants regarding the same issue and/or multiple instances of the same issue shall be regarded for the purposes of this section as one (1) issue. The arbitrator shall not have the authority to add to, modify, detract from or alter in any way the provision of this Agreement or any amendment or supplement thereto. The decision of the arbitrator shall be final and binding upon the parties subject to the applicable legal review.

The **Association** proposes the following contractual language:

For the purposes of this Agreement, the term "grievance" means any complaint, difference or dispute between the Employer and any Employee with respect to the interpretation, application, or violation of any of the provisions of this Agreement or any applicable rule or regulation or policies, agreements or administrative decisions affecting any employee(s) covered by this Agreement.

Minor disciplinary matters (less than six (6) days of fine or suspension or equivalent thereof) shall be included in this Grievance Procedure.

Grievances shall be processed in accordance with the following procedure.

STEP ONE

Grievances shall be submitted verbally to the office of the Fire Chief within fourteen (14) calendar days following the date upon which the grievance occurred. The grievance shall thereupon be discussed at a meeting consisting of the employee involved, the Association representative, and the Fire Chief or his/her designee. The meeting shall be conducted within fifteen (15) calendar days from the date the grievance is submitted unless the Association and the Fire Chief agree to conduct the meeting at a later date. If there is no meeting within five (5) calendar days then the grievant may proceed to the next step.

STEP TWO

If a grievance is not settled at the grievance meeting described in Step 1, above or no hearing is conducted, the Association may within five (5) calendar days from the grievance meeting, appeal the grievance in writing to the Office of the Executive Director who shall respond to said grievance in writing within 10 calendar days of receipt of the grievance appeal.

STEP THREE

If the grievance at Step Two is denied, or in the event that 10 calendar days pass without a decision at Step Two, then the grievant or union may proceed to submit the grievance to Arbitration. The grievance may be submitted to Arbitration before an Arbitrator appointed pursuant to the rules of the Public Employment Relations Commission.

The designated arbitrator shall be bound by the provisions of this Agreement and applicable laws of the State of New Jersey and of the United States. The Arbitrator shall not have the authority to add to, modify, subtract from, or alter in any way the provisions of this Agreement or amendment or supplement thereto. In rendering his written decision, the arbitrator shall indicate in detail his findings of fact and reasons for making the award. The decision and award of the arbitrator shall be final and binding upon the parties, and upon the grieving employees. The costs of the services of the arbitrator shall be borne equally between the parties. Any other expenses, including but not limited to the presentation of witnesses, shall be paid by the party incurring same. Each arbitration shall be limited to one grievance unless otherwise agreed in writing by the parties. Only the Board of Directors or the Association may submit a grievance to arbitration under this Article.

The failure of the employer to answer a grievance at any level shall be deemed a denial of the grievance on all applicable grounds.

The Association points out that each of the previous contracts included grievance procedures culminating in binding arbitration with the arbitrator selected from PERC's roster. According to the Association, its proposal continues the format for processing grievances found used in the predecessor agreements. The Association notes that the predecessor grievance procedures were used for many years without problems. In support of this point, the Association points to the numerous discussions of individual grievances throughout the record and notes that there is no discussion of procedural problems inherent in the grievance procedures.

Additionally, the Association includes "minor discipline" in the grievance procedure which it believes benefits to both the Regional and the Association and is in the public interest. The Association points out that reasonable access to the grievance procedure provides an accessible and less expensive forum for the resolution of minor discipline than does Superior Court. Emphasizing that Regional did not criticize the Association's proposal during these proceedings, the Association seeks an award of its proposed grievance procedure.

The Regional asserts that its proposal strikes the appropriate balance between the interests of the Regional and the Association. According to the Regional, its proposal contains a reasonable definition of "grievance" and

provides for a reasonable time for the aggrieved Fire Officer to present and file his grievances. The Regional also maintains that its grievance procedure is designed to secure, at the lowest possible level, an equitable solution to the problems which may arise affecting the terms and conditions of employment. According to the Regional, under its proposal, the first step is an attempt to resolve the grievance with the Fire Officer and the supervisor. If no resolution can be reached, the Fire Officer may present his grievance to the executive director. If no resolution can be reached, then the Fire Officer can file a written grievance to the executive director. If no resolution can be reached, the will have a reasonable amount of time to file for arbitration.

The Regional contends that its proposal will save both parties time and money when attempting to resolve grievances, since most grievances can be resolved informally and at the lowest levels possible. If that is not possible in a particular circumstance, the Regional notes that the aggrieved Fire Officer may still request arbitration.

Although the parties have not agreed upon any of the terms of the grievance procedure, there is no substantial disagreement about (1) the purpose of the grievance procedure; (2) permitting any employee to discuss the matter informally with any appropriate member of the Department; (3) stating that the agreed upon procedure constitutes the sole and exclusive method for resolving differences between the parties covered by this Agreement, and shall be followed

in its entirety unless any step is waived by mutual consent; (4) stating that the time limits expressed herein shall be strictly adhered to; and (5) requiring the aggrieved or the Union shall institute action under this provision within a certain number of days.

The parties disagree as to the definition of a grievance, the exact number of days that an action has to be instituted, and the steps to be followed once a grievance is filed remain in dispute. Turning first to the definition of a grievance, the Association's proposal defines a grievance broadly as "any complaint, difference or dispute between the Employer and any Employee with respect to the interpretation, application, or violation of any of the provisions of this Agreement or any applicable rule or regulation or policies, agreements or administrative decisions affecting any employee(s) covered by this Agreement." The Regional's definition would limit a grievance to "a complaint arising out of a claimed violation, misinterpretation or inequitable application of the provisions of this contract." The Association's definition would expressly apply the full grievance procedure, including binding arbitration, to minor discipline. The Regional's proposal would prohibit arbitration over grievances concerning the imposition of discipline of less than forty-eight hours (48) pay affecting one employee. While the Association's proposed definition is all encompassing, the Regional's proposal limits the scope of the grievance procedure as well as the right to take disputes to binding arbitration.

The North Bergen grievance procedure provided for four (4) steps. Step 1 provided that the aggrieved employee was required to file his or her grievance within seven days of its occurrence and the Chief was required to make a determination within seven days after receipt of the grievance. Step 2 provided that the aggrieved parties were required to meet with the Fire Director. If the grievance was not settled through the first two steps, Step 3 required the aggrieved employee to file his grievance with the Director of Public Safety within seven days. Step 4 required the Union to file an appeal with the State Board of Mediation for binding arbitration.

The Union City grievance procedure provided for three steps. Step 1 required the aggrieved employee to deliver his grievance to his immediate supervisor within fourteen (14) days of the occurrence. Step 2 required the aggrieved employee to present his grievance to the Director within seven (7) days after it was presented to the immediate supervisor. If the grievance was not settled in Steps 1 and 2, the parties had the right to submit the matter to arbitration.

The Weehawken grievance procedure provided for four steps. Step 1 required the aggrieved employee to present his grievance to an immediate supervisor within 15 days of its occurrence. Step 2 required the aggrieved employee to present his grievance to the Public Safety Director within ten days after submission to the immediate supervisor. Step 3 required the aggrieved

employee to present his grievance to the Township Manager within five (5) days after the Public Safety Director's determination. If the grievance was not settled through one of the first three steps, the parties were entitled to submit the dispute to arbitration within 15 days after the Township Manager's determination.

The West New York grievance procedure provided for four steps. Step 1 required the aggrieved employee to present his grievance informally. If the grievance was not settled informally at Step 1, at Step 2, the aggrieved employee had the right to submit the grievance to the Chief of the Fire Department. At Step 3, the aggrieved employee had the right to submit the grievance to the Director of Public Safety. Finally, pursuant to Step 4, the aggrieved employee could submit the matter to arbitration.

After consideration of the parties' concerns regarding both the definition and the timing of the steps of the grievance procedure, this Award, like the previous West New York and Weehawken agreements, defines a grievance more broadly than that proposed by the Regional. This broader definition is more likely to achieve the purposes of the grievance procedure as proposed by the Regional to "secure, ... an equitable solution to the problems which may arise affecting the terms and conditions of Fire Officers". Permitting binding arbitration of all minor discipline is more economical than requiring some minor discipline to be limited to judicial appeal. I have also provided for an ability to grieve administrative decisions affecting employees through Step 2 (two) of the

procedure. Similarly, the time limits set forth in this Award are designed to flow from the Regional's proposal that a purpose of the grievance procedure is "to resolve grievances as soon as possible so as to assure efficiency and promote employees' morale."

Accordingly, and with due consideration to the agreements reached between the Regional and the Firefighters, the public interest in quick and economical resolution and the interest of consistency between the negotiations units, where possible, the Grievance Procedure, shall provide as follows:

Section 4.0: The purpose of this procedure is to secure, at the lowest possible level, an equitable solution to the problems which may arise affecting the terms and conditions of Fire officers and to resolve grievances as soon as possible so as to assure efficiency and promote employees' morale. The parties agree that this procedure shall be kept as informal as may be appropriate.

Section 4.1: Nothing herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the Department. The Union will explore voluntary resolution where appointed at the lowest level.

Section 4.2: A grievance is defined as any disagreement between the Fire Officer and the Employer, or between the Association and the Employer, involving the interpretation, application or violation of the terms of this agreement, matters of safety affecting or impacting upon employees and administrative decisions affecting employees. Grievances concerning administrative decisions affecting employees may be filed through step 2 (two) of the grievance procedure.

The grievance procedure referred to in this Article shall be in addition to and not in derogation of the Civil Service Act or remedies available to the Association or its members by virtue of

any statutes of the State of New Jersey or other rules and regulations.

The President of the Association or his duly designated representative shall be recognized by the Chief of the Fire Department for the purpose of presenting the grievance. The grievance may be so presented with or without the presence or permission of the aggrieved person.

The following constitutes the sole and exclusive method for resolving differences between the parties covered by this Agreement, and shall be followed in its entirety unless any step is waived by mutual consent.

The time limits expressed herein shall be strictly adhered to. If any grievance has not been initiated within the time limits specified, then the grievance shall be deemed to have been abandoned. If the grievance is not processed to the next succeeding step in the grievance procedure within the time limits prescribed thereunder, then the disposition of the grievance at the last preceding step shall be deemed to be conclusive. If a decision is not rendered within the time limits prescribed for decision at any step in the grievance procedure, then the grievance shall be deemed to have been denied. Nothing herein shall prevent the parties from mutually agreeing to extend or contract the time limits for processing the grievance at any step in the grievance procedure.

The aggrieved or the Association shall institute action under this provision within ten (10) calendar days after the event giving rise to the grievance has occurred and the aggrieved person knew or should have known of the event or events upon which the claim is based. An earnest effort shall be made to settle the differences between the aggrieved employee and his immediate supervisor for the purpose of resolving the matter informally. Such grievance must be presented within this time period or such grievance shall be deemed waived.

Step One

The aggrieved or the Association shall institute action under this provision within eight (8) calendar days after the event giving rise to the grievance has occurred and the aggrieved person knew or should have known of the event or events upon which the claim is based. An earnest effort shall be made to settle the differences between the aggrieved employee and his immediate supervisor for the purpose of resolving the matter informally. Such grievance

must be presented within this time period or such grievance shall be deemed waived.

Step Two

If no agreement can be reached orally within five (5) calendar days of the initial discussion with the immediate supervisor, the employee or the Association may present the grievance in writing within ten (10) calendar days thereafter to the Executive Director or his designated representative. The written grievance at this step shall contain, without prejudice to either party, the relevant facts and a summary of the preceding oral discussion, the applicable section(s) of this contract violated, and the remedy request by the grievant.

The Executive Director shall respond, in writing, to the grievance within five (5) calendar days of the submission.

Step Three

If the grievance is not settled through Steps One, and Two, either party shall have the right to submit a dispute involving the interpretation, application or violation of the terms of this agreement to binding arbitration within fifteen (15) days pursuant to the rules and regulations of the Public Employment Relations Commission. An arbitrator, who is a member of the panel of New Jersey Public Employee Relations Commission, will be mutually agreed upon by the parties. The costs for the services of the arbitrator shall be borne equally by North Hudson Regional Fire & Rescue and the North Hudson Fire Officers Association.

Any other expenses, including, but not limited to, the presentation of witnesses, shall be paid by the parties incurring same.

The arbitrator shall be bound by the provisions of this Agreement and the Constitution and Laws of the State of New Jersey, and be restricted to the application of the facts presented to him involved in the grievance. No more than one (1) issue may be submitted to the arbitrator at one (1) time unless arising out of the same facts or agreed in writing by both parties. Multiple grievants regarding the same issue and/or multiple instances of the same issue shall be regarded for the purposes of this section as one (1) issue. The arbitrator shall not have the authority to add to, modify, detract from or alter in any way the provision of this Agreement or any amendment or supplement thereto. The decision of the arbitrator

shall be final and binding upon the parties subject to the applicable legal review.

PROBATIONARY PERIOD

The **Regional** proposes the following contractual language:

Section 5.3: All employees hired or promoted during the term of the Agreement shall serve a probationary period pursuant to Department of Personnel rules and regulations. During this probationary period, the Regional reserves the right to terminate a probationary employee for any reason. An employee, if terminated, shall not have recourse through the grievance procedure set forth in this Agreement.

The Regional asserts that its proposal sets forth contractual language explaining that all newly hired and/or promoted Fire Officers will serve a probationary period, and can be terminated during this probationary period. According to the Regional, this provision is similar to a provision included in the previous North Bergen agreement. The Regional points out that the Association did not present any evidence explaining why this provision should not be adopted.

The Association objects to the inclusion of this provision. This provision, which sets forth the rights of probationary employees is identical to the provision agreed to by the Regional and its Firefighters Union. This provision, as proposed, is not appropriate for Fire Officers because it speaks to termination during the probationary period. The provision must be modified and, as modified, is awarded as follows:

All employees hired or promoted during the term of the Agreement shall serve a probationary period pursuant to Department of Personnel rules and regulations. During this probationary period, the Regional reserves the right to exercise its authorities as set forth in Department of Personnel rules and regulations.

HOURS OF WORK

The **Regional** proposes the following contractual language:

Section 6.0: The average workweek for Lieutenants, Captains, Battalion Chiefs and Deputy Chiefs will be fifty-six (56) hours. The workday shall consist of twenty-four (24) hours of consecutive duty shift followed by forty-eight (48) consecutive hours off. The change of shift shall commence at 8:00 a.m.

Section 6.1: For employees assigned to staff functions, the work week shall consist of a five (5) day week - each work day consisting of the hours from 8:00 a.m. to 4:30 p.m. Management reserves the right to change the work schedules of staff positions to accommodate the needs of the department. Any modified work schedule shall not be considered a vested right or benefit and the Regional has no obligation to "meet and confer" prior to revocation.

The **Regional** also proposes the following contractual language regarding meals:

Section 17.0: It has been agreed to by both the Regional and the Association that it should be required of each Fire Officer, irrespective of whether the Fire Officer leaves his assigned duty station during his shift, that the Fire Officer contribute such sum as may be required to the organized meals which are prepared during the normal tour of duty.

The **Association** proposes the following contractual language:

- A 1. The work day shall consist of twenty-four (24) consecutive duty hours.
2. The work schedule shall be twenty-four (24) hours on duty immediately followed by seventy-two (72) hours off duty, which is again immediately followed by twenty-four (24) hours on duty, and so on.

B. Starting and Quitting Times

Employees shall start the work day at 7:00 AM and shall quit at 7:00 AM the following day.

Employees placed on a staff schedule shall work a seven (7) hour day with five like shifts on a Monday to Friday work week. (Ex. 8 am to 3 pm, 9 am to 4 pm, etc). (Staff schedule employees shall have all time entitlements calculated on a three for one basis.)

Employees covered by this Agreement shall be permitted without restriction to mutually exchange work.

C. Meals

It has been agreed to by both the Employer and the Association, that it should be required of each employee, irrespective of whether the employee leaves his assigned duty station during his normal 24 hours shift, that the employee contribute such sum as may be required to the organized mess (meals) which are prepared during the normal 24 hour shift.

The Regional supports its proposal for a 24 hour shift schedule by reference to the previous schedules revolving around the 24 hour workday in the municipalities of North Bergen, Union City, Weehawken and West New York. However, unlike those agreements, the Regional seeks 48 hours off rather than 72. The Regional also seeks an 8:00 a.m. start time. The Regional points out that in North Bergen and in Weehawken, the 24-hour shift was scheduled from 7:30 a.m. to 7:30 a.m. the following day; in Union City the 24-hour shift was schedule from 7:50 a.m. to 8:00 a.m. the following day; and in West New York, the 24-hour shift was scheduled from 8:00 a.m. to 8:00 a.m. the following day,

each followed by 72 hours off. The Regional compares these shifts with the 56 hour work week consisting of 24 hour shifts worked in Phoenix and San Diego, as well as the Harrison, Hillside and Hoboken Fire Officers, who each work 24 hours followed immediately by 72 hours off.

Addressing the issue of the start time of each shift, the Regional notes the testimony of Captain Brian McGorty that Fire Officers who were employed by Weehawken, Union City, West New York and Guttenberg work from 8:00 a.m. to 8:00 a.m. the following day and those formerly employed in North Bergen work from 8:00 a.m. to 8:00 a.m. the following day. Noting that the Association seeks a uniform start time of 7:00 a.m. compared to the 8:00 a.m. start time, the Regional points out that the parties agree upon a uniform start time but one which has to be determined by the arbitrator.

Regarding the duration of shifts and the time off between shifts, the Regional again cites Cpt. McGorty's testimony that 24-hour shifts best serve the needs of the public and of the Fire Officers. However, the Regional takes issue with Cpt. McGorty's testimony that a 42 hour work week is preferable to permit time between shifts to expel contaminants from one's system. The Regional notes that Cpt. McGorty was unable to provide support for this testimony. The Regional emphasizes Cpt. McGorty's testimony that under the 42-hour workweek, the maximum number of days worked per year is 91, less eleven vacation days, sick days and other leave time. The Regional also cites Cpt.

McGorty's testimony that the staff schedule would apply to officers handling administrative staff functions, such as a complaints officer. According to Cpt. McGorty, it is common for some Fire Officers to work 24-hour shifts while others, particularly staff officers, work 8-hour shifts in a department the size of the Regional, which is now the third largest department in the State.

The Regional also cites Martin Sanzari's testimony acknowledging that, in the past, West New York used to operate on a 56-hour work week and that if Regional operated on a 56-hour cycle of 24-hour shifts, it would not negatively affect its ability to meet training requirements.

Addressing the work schedule for Fire Officers assigned to staff functions, Sanzari testified that West New York employed two Deputy Chiefs and one Captain in staff positions with a five day schedule from 8:00 a.m. to 4:00 p.m. The Regional notes that Sanzari agreed that the Association's proposal would reduce the amount of hours worked by the West New York staff officers because the Association proposes a seven (7) hour workday for staff officers.

Looking at the schedule worked by Union City Fire Officers, the Regional points to Lt. Focht's testimony that Officers report at 7:50 a.m. and work until 8:00 a.m. the following morning. The Regional notes that Lt. Focht testified that Union City's contract contained a provision for staff officers that is similar to the Association's proposal. Likewise, Captain Zavardino testified that North Bergen's

contract did not include a staff schedule, but North Bergen did employ staff officers who worked from 8:00 a.m. to 4:00 p.m. five days per week.

The Regional argues that the evidence establishes that the 24-hour work schedule was originally and historically created with the one on, two off cycle, which is a 56-hour work week schedule. According to the Regional, the 24-hour work schedule on a one on, three off schedule is forty-two (42) hours per week. However, the Regional focuses on the significance of the low number of days that a Fire Officer works under that schedule. According to the Regional, under this schedule, a Fire Officer reports to the fire station only ninety-one (91) calendar days per year less vacation days, sick days, personal days or any other days off. The Regional calculates that subtraction of vacation days reduces this number to about 75 calendar days. The Regional calculates further than when sick days are considered as well, the true number of work days on the one day on, three days off is barely 70 calendar days per year.

The Regional contends that the 24-hour schedule, as created in the Western United States was part of the 56-hour week of one day on, two days off schedule as was used in Guttenberg before regionalization. Therefore, the Regional argues that in recognition of the frequency of actual calendar workday and the current significant salaries and outstanding benefits, the proposed work schedule as submitted by the Regional is more reasonable.

The Association urges adoption of its work hours and workweek provision pointing to the testimony of Cpt. McGorty about the prevalence of the 24-hour shift in North Hudson. Specifically, Cpt. McGorty testified that the similar work schedules in each of the five municipalities made regionalization easier and facilitated the merger. Cpt. McGorty also testified that the 24-hour on/72-hour off schedule has worked well in densely populated areas such as North Hudson and should not be disturbed. The Association also cites Sanzari's testimony that the 24-hour shift has been effective in West New York since the 1970's and would be successful in meeting the needs of Regional.

According to the Association, its proposal for a staff schedule, including the specific start and stop times, are a continuation of long standing practice. The Association cites Sanzari's testimony that the Regional currently employs officers working on a five day, eight hour per day cycle, including the positions of Battalion Chief and Deputy Chief. The Association points out that it does not take a position as to the number of individuals in staff positions, only as to the schedule that those individuals designated in staff positions should work.

Addressing its meals provision in paragraph C, the Association again asserts that this proposal, which refers to an organized mess, a facility necessary in a 24-hour operation, is a continuation of long standing practice. The Association cites Cpt. McGorty's testimony that this proposal is consistent with current practice, and this system is working without problems. Similarly, the

Association cites Sanzari's testimony that the system works in West New York as well. Finally, the Association point out that is meals proposal has no impact on the Regional.

Both parties agree upon a 24-hour work day, but disagree as to the amount of time off between shifts. The Association's work schedule proposal would continue the schedule followed under each of the predecessor agreements of 24 hours on duty followed by 72 hours off duty. The Regional's proposal would radically change the terms and conditions of work. The Regional's proposed work schedule would effect such a change by increasing the total number of hours worked annually by one third from 2,184 hours to 2,928 hours per year. Such significant change could not be accomplished without a significant increase in compensation for the additional hours worked. Although the Regional's Fire Officers working 24 hour shifts work fewer days per year than do individuals employed in occupations working eight hour shifts, its Fire Officers work 2184 hours annually compared with the 2080 hours worked annually by employees who work a standard 40 hour workweek. Based upon the agreements in evidence, the 24/72 schedule is commonplace in New Jersey while the 24/56 is not. Under all of these circumstances, there is insufficient evidence of the need to modify the current work schedule of 24 hours on and 72 hours off.

The parties agree as to the need for a uniform shift change. The Association urges a 7:00 a.m. shift change time to avoid the increased level of traffic at 8:00 a.m. I place significance on a coordinated time for shift change between Firefighters and Fire Officers and award a shift change to take place at 7:30 a.m.

Regarding the Association's proposal for organized mess meals during the twenty-four hour shift, the Regional cites Cpt. McGorty's testimony that it reflects the current system and there are no reported problems with it. Under that system, Fire Officers contribute to a commissary, or house fund, which goes towards the purchase of supplies that are necessary for the house, such as coffee, butter, and milk and Fire Officers also either contribute financially to a fund to purchase meals, or they bring in their own food for meals. The Regional also notes that Cpt. McGorty testified that the Weehawken contract did not include a provision similar to the one proposed by the Association. Similarly, the Regional notes that Sanzari also acknowledged that the West New York contract did not have a provision similar to the Association's proposal. Captain Zavardino explained the history of the meal provision in the North Bergen contract as follows:

The history on this is, one of the items that I negotiated into one of our contracts, based on the tax law, had some experience in tax preparation, and there were some cases out of California. Basically, we work a 24-hour shift, and on that 24-hour shift, we are working for the employer. As a condition of the employer, we have to maintain a 24-hour shift and we have to eat there, so we have

our lunch and our dinner, we cannot go home. So the way the tax law is written is, if you work for the convenience of the employer and it is spelled out in your contract, as far as work hours, you could deduct your meals. It really wasn't necessary for the supplies of the fire house, it was that we could write off our meals as a convenience of employer and it was no cost to the township at that point, just basically confirming the fact that we do work for the convenience of the employer for a 24-hour shift and we can't have our meals at home.

The Regional recognizes that both its proposal and the Association's are quite similar, but asks that its proposal be awarded because it more succinctly sets forth the rights and obligation of the Fire Officer with regard to his meal contribution.

Addressing its meals provision in paragraph C, the Association again asserts that this proposal, which refers to an organized mess, a facility necessary in a 24-hour operation, is a continuation of long standing practice. The Association cites Cpt. McGorty's testimony that this proposal is consistent with current practice, and this system is working without problems. Similarly, the Association cites Sanzari's testimony that the system works in West New York as well. Finally, the Association points out that its meals proposal has no impact on the Regional. The parties acknowledge that their meals proposals are similar and a meals provision that mirrors their proposals is awarded.

Both parties propose a work schedule for Fire Officers assigned to staff positions. The Regional proposes work hours of 8:00 a.m. to 4:30 p.m. inclusive of lunch while Association proposes a seven hour work day. Testimony reflects

that the work schedule for staff Fire Officers in North Bergen and West New York was from 8:00 a.m. to 4:00 p.m. No credible evidence was offered to support altering these times and I award these hours which shall include a one-half hour paid lunch.

Accordingly, the agreement shall provide the following regarding the hours of work:

A. Work Day

1. The workday shall consist of twenty-four (24) consecutive duty hours.
2. The work schedule shall be twenty-four (24) hours on duty immediately followed by seventy-two (72) hours off duty, which is again followed by twenty-four (24) hours on duty, and so on.

B. Line Fire Officer Starting and Leaving Times

Employees shall start the workday at 7:30 a.m. and shall leave at 7:30 a.m. the following day.

C. Meals

It shall be required of each Fire Officer, irrespective of whether the Fire Officer leaves his assigned duty station during his shift, that the Fire Officer contribute such sum as may be required to the organized meals which are prepared during the normal tour of duty.

D. Staff Fire Officer Starting and Leave Times

The workweek for Fire Officers assigned to a staff position shall consist of a five (5) day week each work day consisting of the hours from 8:00 a.m. to 4:00 p.m. including a one half hour paid lunch.

EXCHANGE OF TOUR DUTY

The **Regional** proposes the following contractual language:

Section 6.2: The Executive Director, or his designee, may grant the request of any two (2) members of the Department, who have completed their probationary period, to exchange tours of duty (24 hour tours) subject to the following conditions:

- (a) Such request shall be submitted in writing by both members seventy-two (72) hours in advance, to be signed and given to the Executive Director, except in case of emergency wherein the wait procedure may be reduced.
- (b) Under no circumstances will employees be permitted to exchange tours of duty if such change would entitle either employee to receive overtime unless approved by the Executive Director.
- (c) All exchanged tours of duty must be paid back within the calendar year taken.
- (d) Because of the disruption to the operation of the fire department, no employee may take more than five (5) mutual swaps during a calendar year without the express permission of the Executive Director. Each use will be considered one time for each employee.
- (e) Employees seeking or agreeing to exchange a tour of duty must be qualified to perform the duties and responsibilities of the member with whom they intend to swap tours. Lieutenants shall be permitted to swap tours with Captains and vice versa. Battalion Chiefs and Deputy Chiefs will be permitted to swap tours with each other.
- (f) Exchanges of tours of duty will neither be requested nor granted for any period of time during which either member involved in the exchange is scheduled for formal training.
- (g) Exchange of tours will be for twenty-four (24) hour periods only, during the normal tour of duty. There will be no partial exchanges of tours.

- (h) Any member who is scheduled to work and makes arrangements to have another employee work on his behalf, is responsible to have the shift covered. If the time is not covered for any reason, the originally scheduled member will owe the Employer two tours of duty for each tour taken but not covered.

Section 6.3: The Association shall indemnify, defend and hold the Regional harmless against any and all claims, demands, suits or other forms of liability, that arise out of or by reason of any action taken or permitted by the Regional with respect to Section 6.2.

The **Association** has proposed in its hours of work proposal that:

Employees covered by this Agreement shall be permitted without restriction to mutually exchange work.

The Regional urges adoption of its proposal covering exchanges in tours of duty, noting that the predecessor agreement in Weehawken provided for 72 hours notice and that the exchange would not entitle any officer to receive overtime. North Bergen provided that requests for mutual changes were to be submitted at least 48 hours in advance and were not permitted if the change would entitle either officer to receive overtime, unless the exchange had the specific approval of the Fire Director. Additionally, the North Bergen contract required that exchanges had to be rank-for-rank responsibility. The Regional points to Captain Zavardino's testimony that North Bergen Fire Officers were limited to five mutual exchanges per year and there was a penalty for non-coverage of an approved mutual exchange. Specifically, the Fire Officer originally scheduled to work the shift would be charged if the other Fire Officer agreeing to work that shift did not come to work.

The Regional cites Lt. Focht's testimony that the Union City contract did not address the mutual exchange of tours of duty, but that mutual exchanges were permitted after paperwork submitted directly to the deputy chief of the platoon and that all exchanges had to be for either 12 or 24 hours.

In its hours of work proposal, the Association proposed that mutual exchanges be permitted without restriction. The Association opposes the Regional's proposal which includes restrictions on the mutual exchange of duty, as well as penalties when an officer exchanging a tour of duty does not work the tour exchanged.

The Regional would require restrictions and procedures on the mutual exchange of tours of duty, while the Association would permit mutual exchanges to occur without set procedures or restrictions. The Regional's proposal might unduly limit mutual exchanges, the Association's proposal, with no procedural limitations, could result in significant scheduling difficulties for the Regional.

I am persuaded that the Regional's proposal to charge the originally scheduled employee when another employee does not come to work a mutual exchange, is a reasonable precondition providing accountability for tour swaps. But the proposed penalty is too severe and shall be limited to one tour for a tour not covered. The Regional has not demonstrated a need for the Association to provide indemnification for any harm arising out of the use or application of the

exchange of tour of duties provision and it is not awarded. A limit of six (6) mutual swaps per years, in periods of twelve (12) or twenty-four (24) hours is reasonable. This Award imposes the same procedures and restrictions upon mutual exchanges which have been awarded in the agreement between the Regional and its Firefighters.

The Executive Director, or his designee, may grant the request of any two (2) members of the Department, who have completed their probationary period, to exchange tours of duty (24 hour tours) subject to the following conditions:

- (a) Such request shall be submitted in writing by both members seventy-two (72) hours in advance, to be signed and given to the Executive Director, except in case of emergency wherein the wait procedure may be reduced.
- (b) Under no circumstances will employees be permitted to exchange tours of duty if such change would entitle either employee to receive overtime unless approved by the Executive Director.
- (c) All exchanged tours of duty must be paid back within the calendar year taken.
- (d) Because of the potential for disruption to the operation of the fire department, no employee may take more than six (6) mutual swaps during a calendar year without the express permission of the Executive Director or his designee. Each use will be considered one time for each employee.
- (e) Employees seeking or agreeing to exchange a tour of duty must be qualified to perform the duties and responsibilities of the member with whom they intend to swap tours.
- (f) Exchanges of tours of duty will neither be requested nor granted for any period of time during which either Fire Officer involved in the exchange is scheduled for formal training.
- (g) Exchange of tours will be for twelve (12) or twenty-four (24) hour periods, during the normal tour of duty.

- (h) Any member who is scheduled to work and makes arrangements to have another employee work on his behalf, is responsible to have the shift covered. If the time is not covered for any reason, the originally scheduled member will owe the Employer one tour of duty for each tour taken but not covered.

MILITARY LEAVE

The **Regional** proposes the following contractual language:

Section 7.21: LEAVE OF ABSENCE FOR FIELD TRAINING IN RESERVE CORPS OF UNITED STATES

Section 7.22: A bargaining unit member who is also an active member of the organized reserve of the Army of the United States, United States Naval Reserve, United States Air Force Reserve or United States Marine Corps Reserve or other organization affiliated with these, shall be entitled to leave of absence from his respective duty without loss of pay on which he shall be engaged in field training. Such leave of absence shall be in addition to the regular vacation allowed such employee.

Section 7.23: Any request for such leave must be made to the Executive Director and accompanied by a copy of a written order from the commander of the Armed Forces Reserve Unit involved, indicating report and return dates of training period. Employees, who, subsequent to their date of hire, desire to become active members of an Armed Forces Reserve Unit must secure written permission from the Fire Chief.

The Regional points out that the North Bergen agreement provided that Fire Officers would receive military leave in accordance with State and Federal statutes, while the Union City and West New York agreements provided that Fire Officers who enter military service of the United States, pursuant to the provisions of the Selective Service Act of 1948, shall be granted all rights and privileges under the agreement, and the Weehawken contract did not address

military leave. In West New York, the agreement also provided that Fire Officers called to active duty would be granted eight (8) working days' leave with pay, prior to induction and when military compensation of the Fire Officer is less than his salary, the Department could pay the difference to the Fire Officer in monthly installments pursuant to the authority by law and N.J.S.A. 38:23-3.

The Regional notes that N.J.S.A. 38:23-1 entitles all municipal employees who are members of organized military reserves to leaves of absence without loss of pay or time for field training days, in addition to regular vacation leave. Id. The Regional also cites N.J.A.C. 4A:6-1.11 and 1.1(a)(1), including subsection (b), which grants leaves of absence for required military duty with pay not in excess of 90 days per year. According to Regional, the regulation also states that "appointing authorities may reschedule an employee's work time to avoid conflict with such required duty." Id.

The Regional explains that its proposal would provide notice when a Fire Officer is called or ordered to active duty so that it can modify and adjust its schedule. Additionally, the Regional notes that the statute governing military leave prohibits the reduction of salary, but does not provide for the increase of salary. Accordingly, the Regional asserts that it must be made aware of the military compensation that the Fire Officer receives in order to prevent that Fire Officer from receiving greater compensation than he or she would normally be

entitled to. The Regional maintains that this section is a managerial prerogative, and as such, is not negotiable.

The Association does not address military leave.

The Regional and the Firefighters have stipulated to the following provision covering military leave.

Section 7.22: All employees shall be granted all rights and privileges with respect to military leave pursuant to the provisions of State and Federal Statutes.

Section 7.23: No employee shall suffer a loss in pay when required to serve his country.

That provision addresses the Regional's concerns regarding military leave and adequately protects Fire Officers who engage in military service. Accordingly, it is awarded here.

FUNERAL LEAVE

The **Regional** proposes the following contractual language:

Section 7.24: Employees shall be granted time off with no loss of pay for the death of an immediate family member commencing from and including the date of death up to and including the day of the funeral not to exceed a maximum of two (2) twenty-four (24) hour tours.

Section 7.25: Immediate family member shall be defined to include spouse, child, parents, brothers, sister, father-in-law, mother-in-law,

grandparents and grandchildren of the employee. In the event of the death of a brother-in-law; sister-in-law, aunt, uncle or other relative residing in the employee's immediate household, the member shall be entitled to the day of funeral only.

The **Association** proposes the following contractual language:

- A. Members shall be granted time off with no loss of pay in the event of a death occurring in the immediate family from date of death until funeral.
- B. Immediate family shall be defined to include spouse, child, parents, aunts, uncles, brother, sister, father in law, mother in law, grandparents, grandchildren and in laws of both members and their spouse.

The Regional points out that the North Bergen contract provided for leave from the date of death of an immediate family member until funeral, and defines immediate family member as spouse, child, parents, brother, sister, father-in-law, mother-in-law, grandparents, grandchildren of both members and their spouse. However, in the event of a death of a brother-in-law, sister-in-law, aunt, uncle or other relative residing in the employee's immediate household, the member was entitled to the day of funeral only. The Regional notes that the Union City contract provided for leave from the date of death of an immediate family member through the day after the funeral, not to exceed five (5) calendar days, and defined immediate family member as wife, child, stepchild, mother, and father. The Regional cites that Weehawken contract which provided for leave from the date of death of an immediate family member up to and including the day of funeral, not to exceed two (2) twenty-four (24) hour tours and defined immediate family member as spouse, children, foster children, father, mother,

father-in-law, mother-in-law, brother, sister, grandparents, aunts and uncles. However, in the event of a death of a close relative, the employee was granted his day tour off to attend the funeral only. According to the Regional, the West New York contract provided for leave for the death of an immediate family member for one (1) work day plus one (1) additional day, if necessary, subject to review. Additionally, the West New York contract defined immediate family member as wife, child step-child, ward, mother, father, step-mother, step-father, grandmother, grandfather, mother-in-law, father-in-law, guardian, brother, sister, aunt, uncle, brother-in-law, sister-in-law, grandchildren, and nephews and nieces.

The Regional explains that its proposal grants members of the bargaining unit up to two (2) twenty-four (24) hour tours for the death of a member of their immediate family, from the day of death to the day of the funeral. According to the Regional, if a member works two (2) twenty-four (24) hour tours during that period, he is entitled to two (2) twenty-four (24) hour tours with pay during that period. The Regional defines who constitutes a member of the Fire Officers' immediate family and provides that if a person is not considered part of the immediate family, said provision provides for time off the day of the funeral only. According to the Regional, the main difference between its proposal and the Association's is that the Association proposes a more expansive definition of what constitutes immediate family.

The Regional asserts that its proposal is more reasonable because its definition of what constitutes “immediate family” is more akin to the accepted definition in today’s society. However, the Regional emphasizes that it would also provide the Fire Officer with one (1) paid tour off to attend the funeral of people such as brother-in-law; sister-in-law, aunt, uncle or other relative. According to the Regional, if the Fire Officer needs additional time off, he can use other mechanisms to get time off, such as a mutual swap and vacation time.

The Association notes that its funeral leave proposal is based upon the North Bergen contract. According to the Association, its proposal is fairly traditional and should not be considered as having a significant impact on the Regional. The Association points out that the definitions included in its proposal are very similar to the predecessor agreements. The Association notes that the Regional did not offer testimony on this subject at hearing.

The Association’s proposal that the bereaved Fire Officer receive time off through the funeral does not provide a specific leave allotment in the event of the death of a family member. However, the award of up to two (2) 24-hour tours of duty from the date of death through the funeral is a reasonable time period for the purpose intended. It is also the same amount awarded to the firefighters and is awarded here.

The parties also disagree as to the definition of immediate family, with the Regional limiting the definition and the Association proposing a more expansive definition. I award the funeral leave provision providing only the day of the funeral for more distant relatives, but expand the definition of immediate family beyond that proposed by the Regional.

Accordingly, the funeral leave provisions of the agreement shall be as follows:

Section 7.24: Employees shall be granted time off with no loss of pay for the death of an immediate family member commencing from and including the date of death up to and including the day of the funeral not to exceed a maximum of two (2) consecutive twenty-four (24) hour tours.

Section 7.25: Immediate family member shall be defined to include spouse, child, parents, brother, sister, father-in-law, mother-in-law, grandparents and grandchildren of the employee or other relative residing in the employee's immediate household. In the event of the death of a brother-in-law; sister-in-law, aunt, uncle, niece or nephew, or step-parent, the member shall be entitled to the day of funeral only.

COURT TIME

The **Regional** proposes the following contractual language:

Section 9.3: Court Appearances

An employee required to testify by the Employer during off-duty hours in a legal proceeding in connection with his duties as a Fire Department employee shall be compensated for the time so spent at a rate one and one-half times his normal rate for a minimum of four hours. No additional compensation shall be paid to bargaining

unit members who make such appearances while on duty. Legal appearances in interest arbitrations, grievance arbitrations and Public Employment Relations Board proceedings will not be paid except when the member's testimony is required by the Employer.

The **Association** proposes the following contractual language:

Court time, as referred to in this Article, shall consist of all time, excluding regular tours of duty, during which an employee covered under this Agreement shall be required to attend a Municipal Court, County Court, Superior Court, Grand Jury proceeding, or other courts or administrative bodies on departmental related matters. All court time shall be paid consistent with Article VIII of this Agreement.

The Regional points out that provisions addressing court time are contained in the Union City and Weehawken agreements and the North Bergen and West New York agreements do not contain court time provisions. According to the Regional, in Weehawken, court time including travel time from the Department headquarters to the pertinent court or administrative body is compensated with a minimum guarantee of two hours. The Regional notes that in Union City, the minimum guarantee for court time is four hours and the Union City agreement also includes language defining the duration of "appearance" as the time when the Fire Officer is required to be and actually is in attendance until the time when he is excused.

The Association asserts that court time is covered by most contracts as a type of recall to duty. In its proposal, the Association seeks court time compensation only when the employee "shall be required to attend ... on departmental related matters." The Association notes that its proposal

incorporates by reference in the last sentence the overtime provisions of Article VIII of the proposal, which it asserts, is the way it was handled in all departments before the regionalization.

According to the Association, the first paragraph of its present proposal is derived from the first paragraph of the Weehawken agreement. Accordingly, the Association asserts that it seeks only to maintain the previous benefit, which is currently being observed. According to the Association, this proposal simply codifies the current practice without substantive change and relates only to departmental matters where a court appearance is required.

Both parties would provide that court time during off duty hours be paid at an overtime rate, with the Regional proposing a four hour minimum allowance. The Association would limit court appearances that an employee “shall be required to attend ... on departmental related matters” while Regional would exclude appearances in interest arbitrations, grievance arbitrations and Public Employment Relations Commission proceedings will not be paid except when the member’s testimony is required by the Employer.”

The proposed four-hour overtime minimum is appropriate for those employees whose testimony is required in court during their off-duty hours and is awarded. Additionally, the Association’s more general language is modified to specify that travel time be included in the calculation of off-duty overtime and is

awarded. Also included in the Court Time provision is the language, which was stipulated to by the Regional and the Firefighters, that "Legal appearances in interest arbitrations, grievance arbitrations and Public Employment Relations Commission proceedings will not be paid except when the member's testimony is required by the Employer." Accordingly, the provision covering Court Appearances is awarded as follows:

Court Appearances

An employee required to testify by the Employer during off-duty hours in a legal proceeding in connection with his duties as a Fire Department employee shall be compensated for the time so spent at a rate one and one-half times his normal rate for a minimum of four hours. No additional compensation shall be paid to bargaining unit members who make such appearances while on duty. If an employee is entitled to overtime shall be required to travel to and from any court or administrative bodies as noted in this Article, such travel time shall be considered and included in the computation of the amount of overtime to which the employee is entitled. Legal appearances in interest arbitrations, grievance arbitrations and Public Employment Relations Commission proceedings will not be paid except when the member's testimony is required by the Employer.

LEGAL REPRESENTATION

The **Regional** proposes the following contractual language:

Section 10.0: Whenever a member is a defendant in any criminal action arising out of or incidental to the performance of his duties, and is found not guilty, the Regional shall provide this member with counsel or reimburse the employee for reasonable expenses incidental to such representation for the defense of such action or proceeding. The Regional, shall in its sole and absolute discretion, determine if it will provide an attorney or permit the employee to

select counsel. If an employee is permitted to retain counsel, such counsel must agree to the fee schedule provided by the Regional.

The **Association** proposes the following contractual language:

The employer shall supply to all Fire Superiors all necessary legal advice and counsel in the defense of charges filed against them in the performance of duty but shall for the settlement of claims for personal injury, death, or property damage arising out of or in the course of their employment, and the employer shall pay and satisfy all judgements against said Fire Superiors from such claim.

The Regional points out that provisions covering legal representation are included in the Union City and Weehawken contracts. Additionally, the Regional asserts that its proposal is consistent with N.J.S.A. 40A:14-28, which governs legal representation of Fire Officers.²

The Regional characterizes the Association's proposal as seeking benefits and coverage that is not provided in the statute not granted by the municipal fire departments. The Regional points out further that though the Association's proposal is similar to the Union City provision, it deletes the phrase "except in

² N.J.S.A. 40A:14-28 provides as follows:

Whenever a member or officer or a municipal fire department or force is a defendant in any action or legal proceeding arising out of or incidental to the performance of his duties, the governing body of the municipality shall provide said member or officer with counsel and costs incidental to such representation for the defense of such action or proceeding, other than for his defense in a disciplinary proceeding instituted against him by the municipality or in a criminal proceeding instituted as a result of a complaint on behalf of the municipality. If such disciplinary or criminal proceeding instituted by or on complaint of the municipality shall be dismissed or finally determined in favor of the member or officer, he shall be reimbursed for the expense of his defense.

The provisions of this section shall apply to members and officers of all municipal fire departments or forces whenever said departments or forces be paid, part-paid, or volunteer.

Id.

cases of disciplinary proceedings instituted against them by the Department...“ after the term “performance of duty.” The Regional notes that the Weehawken contract provides for defense and indemnification provided that the alleged acts do not constitute fraud, malice, willful misconduct, or intentional wrongdoing. Additionally, the Regional notes that the Association did not offer any testimony to support the adoption of its provision. For these reasons, the Regional seeks adoption of its proposal instead of the Association’s proposal.

The Association points out that its proposal is derived from the Union City agreement, though each of the contracts covers this subject matter in some fashion. For example, the Association cites the Weehawken contract, which includes legal representation as an insurance issue and the North Bergen agreement, which considers it a liability insurance issue. However, the Association notes that the consistent theme is that there will be protection for claims made both on duty and off duty for matters arising out of the officer’s status. According to the Association, the rights enunciated in the proposal closely parallel statutory rights, but defines them more clearly.

The Association emphasizes the need for the contract to clearly publicize employees’ protections and rights to avoid a situation where an employee would be second guessing actions at the scene of an emergency based upon potential liability exposure and personal potential detriment is unacceptable and its proposal should be adopted.

Both parties propose to provide some form of legal representation to Fire Officers from claims against them arising out of or incidental to the performance of their duties. The Regional's proposal would limit such representation to criminal proceedings. The Association would provide more encompassing representation that would not only provide legal representation but would indemnify Fire Officers from all claims arising out of or incidental to the performance of their duties by requiring the Regional to pay all judgments against Fire Officers arising in matters incidental to their employment.

The Regional's proposal is more restrictive than any of the predecessor municipal agreements, while the Association's proposal is more generous than any of those agreements. The language of the previous Weehawken agreement provides more expansive indemnification than does the Regional's proposal, but it includes limitation for acts that "constitute fraud, malice, willful misconduct or intentional wrongdoing." The language of the previous Weehawken agreement balances the employee's need to be indemnified against all suits arising from the performance of their duties with the Regional's need to limit its liability for illegal or wrongful acts. Since this provision indemnifies employees, there is no need to specify the amount of the indemnification insurance needed by the Regional. Accordingly, the Legal Representation provision is awarded as follows:

The Employer will defend and indemnify all employees covered by this Agreement in order to protect them from suits arising out of performance of their duties, provided the acts committed by the

employees upon which the damages are based did not constitute fraud, malice, willful misconduct or an intentional wrongdoing.

LEGAL SERVICE PLAN

The **Association** proposes the following contractual language:

The employer shall pay to the Association an annual sum not later than July 1 of each year for the purpose of the provision of a legal service plan to employees covered by the Agreement. It shall be the obligation of the Association to provide the legal service plan for its members based on said sum. The annual sum paid to the Association shall be \$150.00 per covered employee.

According to the Association, the Legal Service Plan proposal for \$150.00 per year is based upon the existing provision and a benefit long enjoyed in the Weehawken contract. The Association argues that since the benefit has been long enjoyed by Weehawken Fire Officers it should not be terminated simply because the previous employers have elected to regionalize. The Association seeks only that the same be continued.

The Regional points out that of the four municipal contracts, only the Weehawken agreement provided a legal service plan in which each employee received only \$100.00 annually for the legal services benefit. According to the Regional, the Association has based its proposal upon that agreement, but has not provided justification for its inclusion in the new agreement or explanation of why it would seek to increase the amount per employee to \$150.00. Accordingly, the Regional urges rejection of the Association's legal representation proposal.

Only the previous agreement in Weehawken included a legal services plan. That plan was funded in the amount of \$100 per firefighter per year. The record does not reflect the extent of this benefit or how often the benefit was used by Weehawken firefighters. Accordingly, there is insufficient evidence of a need to extend this program to the Regional and it is not awarded.

DEPARTMENTAL INVESTIGATIONS

The **Association** proposes the following contractual language:

In an effort to insure that departmental investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

1. The interrogation of a member of the department shall be at a reasonable hour, preferably when the member of the department is on duty, unless the exigencies of the investigation dictate otherwise.
2. The interrogations shall take place at a location designated by the Employer. Usually it will be at the Employer's main office or the location where the incident allegedly occurred.
3. The member of the department shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the members of the allegations should be provided. If it is known that the member of the department is being interrogated as a witness only, he should be so informed at the initial contact.
4. The questioning shall be reasonable in length. Fifteen (15) minutes time shall be provided for personal necessities, meals, telephone calls, and rest periods at the end of every two (2) hours.

5. The member of the department shall not be subject to any offensive language, nor shall he be threatened with transfer, dismissal or other disciplinary punishment. No promise of reward shall be made as an inducement to answering questions.
6. At every stage of the proceedings, the Department shall afford an opportunity for a member of the department, if he/she so requests, to consult with counsel and/or his Association representative before being questioned concerning a violation of the rules and regulations during the interrogation of a member of the department, which shall not delay the interrogation beyond one (1) hour for consultation with his Association representative.
7. In cases other than departmental investigations, if an officer is under arrest or if he is a suspect or the target of a criminal investigation, he shall be given his right pursuant to the current decisions of the United States Supreme Court.
8. Nothing herein shall be construed to deprive the Department or its officers of the ability to conduct the routine and daily operations of the Department.
9. No employee covered by this Agreement shall be subjected to any urinalysis or blood screening unless one of the two (2) circumstances exist: (1) Where the employer has probable cause to suspect that there is a job-related individualized impact with respect to the specific employee being tested. (2) Where the urinalysis or blood testing is done as part of a bona fide annual physical examination which is done for the Department.
10. Under no circumstance shall the employer offer or direct the taking of a polygraph or voice print examination for any employee covered by this Agreement.
11. Under no circumstance shall an employee be subject to any charge whatsoever after 45 days. The 45 day period shall be calculated consistent with **N.J.S.A. 40A:14-147**.

According to the Association, this proposal is based upon existing language in the old Guttenberg contract. The Association maintains that the

protections are basic and essential to emergency service personnel because the nature of duty includes regular reporting and providing of information to management designees. Accordingly, the Association maintains that the line between normal requesting of information and investigative procedures must be carefully guarded. The Association points out that the larger department which has been created through regionalization has compartmentalized internal affairs and investigatory procedures is more defined, but where an investigation is to be conducted the rights of the employees cannot be overlooked.

According to the Association, this proposal protects the rights of employees during investigations, giving little more than basic acknowledgment of "Weingarten Rights", among others. The Association asserts that the 45 day rule finds statutory support and that a charge should not be held over a person's head indefinitely. The Association also asserts that a reasonable interrogation location and procedure are considered "boiler plate" in most contracts. Additionally, the Association points out that where an individual may be the subject of criminal proceedings, the employee should be so advised at the outset, because it is the law as well as common sense. The Association also seeks to avoid the possibility that a criminal investigation be tainted where paramilitary authority is used to coerce a statement. Accordingly, the Association asserts that it seeks a proper investigative procedure with proper investigative practices to produce a result that would not damage the public.

The Association maintains that inclusion of this type of language in the agreement is essential so that every employee will know their rights and have them clearly documented and employer designees will also be clearly advised of these protections and procedural requirements.

The Regional asserts that paragraphs one through nine of the Association's proposal is based upon the Weehawken contract and that none of the other individual municipal contracts contain similar provisions. Additionally, the Regional asserts that paragraphs ten and eleven of the Association's proposal are not based on any of the individual municipal contracts. The Regional urges that the Association's proposal be rejected because it is not negotiable because it restricts its ability to investigate disciplinary infractions or criminal charges.

The Association seeks to include a provision covering employee rights in departmental hearings. That proposal mirrors similar provisions included in the previous agreement in Weehawken. The previous agreements in North Bergen, Union City, and West New York did not include such provisions. Some of the procedural protections that the Association seeks to include in the agreement are long established legal protections, others may exceed legal requirements, while others, though procedural in nature, have potential for impeding a department's investigation. To the extent that the Association proposes procedural protections addressing the time and place of the interrogation, or protections that reiterate

legal requirements, they are included in this Award. The Regional asserts that this provision infringes upon its managerial prerogative to set policy and is non-negotiable and should not be included in the agreement. The Regional has filed a scope of negotiations petition with PERC over several proposals in this case and in the companion case covering the Firefighters, but has not included this provision in its petition. In the absence of direction from PERC on this issue, the Departmental Investigations provision is awarded as follows:

In an effort to insure that departmental investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

- a. The interrogation of a member of the Department shall be at a reasonable hour, preferably when the member of the force is on duty, unless the exigencies of the investigation dictate otherwise.
- b. The interrogation shall take place at a location designated by the Fire Chief. Usually it will be at Fire Headquarters or the location where the incident allegedly occurred.
- c. The questioning shall be reasonable in length. Time shall be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary.
- d. The Department shall permit the member the opportunity to consult with an Association representative at any stage during a proceeding in which the employee reasonably believes may result in disciplinary or criminal charges against that employee upon the request of that employee.
- e. Nothing herein shall be construed to deprive the employer or its employees of the ability to conduct routine and daily operations of the Department.
- f. Nothing herein shall be construed to deny or restrict either the Department or the employee such rights as they may

have under the New Jersey statutes or other applicable laws and/or regulations.

CEREMONIAL ACTIVITIES

The **Association** proposes the following contractual language:

In the event a firefighter or Fire Officer in another Department in the State of New Jersey or metropolitan area is killed in the line of duty, the employer will permit at least two (2) uniformed on-duty Association members of the Department to participate in funeral services for the said deceased member.

In the event a fireman or Fire Officer in another department in the State of New Jersey metropolitan area is killed in the line of duty, the employer, subject to the availability of same will provide a department fire vehicle to those off duty employees wishing to attend.

The Association bases this proposal on the Weehawken contract, asserting that it is little more than a codification of the practice in all of the component departments, as well as the new regional department. The Association notes that when an area firefighter or Fire Officer is lost, release time has always been provided and the Association seeks to include such a provision in this agreement. The Association notes that it is important to the extent that its members would be permitted to wear their uniforms outside of the employing jurisdiction and use a piece of fire apparatus, when available in the employer's discretion.

Noting that the first paragraph of the Association's proposal is based on the Weehawken, North Bergen, and West New York contracts, the Regional

points out that only the Weehawken contract provided for the use of a vehicle. When discussing ceremonial leave, the Regional reiterates that a Fire Officer is scheduled for only approximately ninety-one (91) days per annum, less vacation, and other leave time. According to the Regional, when overtime and other emergencies are excluded, the average Fire Officer, after vacation, is actually scheduled to work less than eighty days per year, less sick leave days and other paid leave, such as convention leave. Relying upon Sanzari's testimony, the Regional concludes that a Fire Officer might work less than seventy (70) days per year. While the Regional recognizes that Fire Officers work a 24 hour shift and that fire fighting can be a dangerous occupation, it believes that Fire Officers are granted sufficient amount of time off. Accordingly, the Regional asserts that Fire Officers have other means to be granted time off, such as vacation time or mutual exchange of duty and urges that ceremonial leave not be included in the new agreement.

Although the Regional raises important concerns about the amount of time off that its Fire Officers are entitled to, the provision of time off to honor and mourn for a firefighter or Fire Officer killed in the line of duty was a practice of each of the municipal departments. Accordingly, the following ceremonial leave provision is awarded.

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

- a. Subject to the availability of same, the Employer will permit a fire department vehicle to be utilized by the Association for the above-referenced funeral service.

PRESERVATION OF RIGHTS

The **Association** proposes the following contractual language:

The parties agree that all benefits, rights, duties, obligations and conditions of employment relating to the status of the North Hudson Regional Fire and Rescue Department which benefits, rights, duties, obligations, terms and conditions of employment are not specifically set forth in this Agreement, shall be maintained in not less than the highest standards between the parties leading to the execution of this Agreement, including each consolidated Department prior to consolidation.

Unless a contrary intent is expressed in this Agreement, all existing benefits, rights, duties, obligations and conditions of employment applicable to any employee pursuant to any rules, regulations, instruction, directive, memorandum, statute or otherwise shall not be limited, restricted, impaired, removed or abolished.

The Association asserts that the addition of this language to the contract is essential. Emphasizing that the enabling legislation requires the maintenance of status quo up to and including signature of the new contract, N.J.S.A. 40:48B-4.2, the Association asserts that the clear statutory intent is to continue long standing terms and conditions of employment as they relate to working conditions of employees. The Association maintains that its proposal is in accordance with the statutory intent that prior practices and procedures, unless changed in the text of this agreement, should be left in place. Noting that the regionalization is an ongoing process that will continue, the Association asserts that the process of coordinating the separate fire departments into a single entity

must be guided by a single standard of application. According to the Association, the language it proposes provides a standard for application and determination of what constitutes change.

The Association emphasizes the importance of a preservation of rights provision to form a standard for judgement of the rights and liabilities of the parties now grouped together in a single regional agency. According to the Association, a typical employer-employee relationship has many years of experience which provide a standard as a guide for judging such issues as grievance determination, but no such history exists here. Therefore, the Association seeks to preserve the historical precedent of the component departments. According to the Association, the actual language is found in many contracts and provides a base line for assessment of the rights and liabilities of the parties. The Association argues that without such a provision, it would be extremely difficult to establish precedent and procedure in a new relationship and this language will provide guidance to the parties as well as to a grievance arbitrator.

The Association points to similar provision in the predecessor agreements, including the "Maintenance of Standards" clause provision in North Bergen, which closely parallels the language it seeks here. The Association also points to the Weehawken contract which included nearly identical language under the terms designated as "Past Practice". Additionally, the Association cites the

“Maintenance of Standards” provisions in the West New York Fire and Guttenberg agreements. Based upon these provisions, the Association maintains that each of the component contracts included similar language to that it proposes and seeks to include in the new agreement.

The Regional urges rejection of the Association’s entire “preservation of rights” provision because it would limit its managerial prerogatives and flexibility by requiring the Regional to maintain and continue antiquated provisions and practices that arose in the individual municipalities. The Regional argues that such a provision would run contrary to the purposes for which it was formed and that it must be recognized as an entirely new entity and employer. The Regional reiterates that the five municipal fire departments no longer exist and it provides fire and rescue services to over 165,000 residents over an eight (8) square mile area.

The Regional emphasizes that it cannot be restricted by clauses or practices from each of the previous municipal contracts because they were negotiated between each municipality and the respective Fire Officer union and address issues and situations particular to that municipality and union only. According to the Regional, the new agreement that will be created as a result of this process must address its unique characteristics. The Regional emphasizes that the previous municipal fire departments and their bargaining units were dissolved by its formation. As the new employer, the Regional asserts that it can

not operate as intended if it is subject to preservation of rights from each of the predecessor departments and urges that the proposal be rejected.

Under the current circumstances of the regionalization of fire services for the five municipalities, the Association's proposal, would require the Regional to maintain all terms and conditions of employment which were in effect under the prior agreements with the municipalities including all those unwritten and not covered by any prior contract. As such, this proposal is overly broad. There is merit to the Regional's contention that its managerial responsibilities, as a new and single employer, should not be encumbered by unstated, unwritten customs and practices arising from decades of previous administrations from individual municipalities who are no longer responsible for implementing fire services. Nevertheless, the Regional's position does not recognize that there is also merit to the Association's assertion that mutually recognized arrangements concerning terms and conditions of employment, not inconsistent with the terms of the new Agreement, should not be rescinded merely because the implementation of the specific terms of this Award do not address them.

The failure to directly address practices may be traced to many reasons. The sheer volume and complexity of terms which have been specifically addressed may have caused omissions, or the parties may have recognized that certain day to day understandings, mutually honored, need not be reduced to writing. It is reasonable to conclude that any practice developed under an

individual municipality need not be carried forward into this Agreement merely because it existed prior to regionalization. Regionalization has altered the underlying foundation of practices developed within individual municipalities who no longer are the employer. However, a distinction can be drawn between those practices and practices initiated after regionalization (along with those not yet established), which I conclude should not cease by unilateral actions. These terms must be considered a source of the parties' rights and duties as well as those reflected by the specific language of the Agreement.

Accordingly, I award the following:

- A. All terms and conditions of employment including general orders, rules and regulations, not specifically set forth in this Agreement nor inconsistent with its terms, which have been initiated after regionalization irrespective of prior practice at an individual municipality, will continue and shall not be changed to the detriment of employees within the Bargaining Unit until changed by negotiation with the Association.
- B. The Department shall not enter into any Agreement with any employee, or groups of employees covered by this Agreement which in any way conflicts with the terms of this Agreement.
- C. The Department agrees to make available to the Association a copy of all general orders issued by the Chief of the Department and/or the Director of the Department at the same time (or earlier if possible) that the general orders are issued to all Fire Officers.

MANPOWER

The **Regional** proposes the following contractual language:

Section 13.0: It is recognized that the health, safety and welfare of employees is dependent, in part, upon the availability of sufficient manpower.

Noting that contract proposals relating to minimum manning requirements are permissively negotiable, the Regional argues that due to frequent false alarms and the varied conditions which confront the Regional and its employees, it should not be required to always assign a specific number of firefighters to fire fighting apparatus. Rather, the Regional argues it should be able to maintain flexibility when handling a fire alarm. For example, the Regional notes that when firefighters are dispatched to a fire scene and it becomes a large fire requiring more help, additional firefighters can be dispatched immediately. The Regional notes that Sanzari testified that West New York operated with two firefighters.

The Association does not support the inclusion of this manpower provision in the agreement.

None of the four (4) predecessor agreements included a manpower provision for Fire Officers. In the absence of a proposal from the Association, the Regional has not demonstrated the need to add one to this agreement. The Regional's proposal for a manpower provision is not awarded.

INJURY LEAVE

The **Regional** proposes the following contractual language:

Section 7.15: An employee who is injured in the performance of duty shall immediately report or cause to be reported, the accident to his supervisor, and shall complete a form provided for such injuries. If a member is injured on-duty and that injury is serious and/or life threatening, that member will be transported to the nearest appropriate medical facility.

Section 7.16 To be eligible for injury leave benefits, both workers compensation benefits and the enhanced benefit paid by the Regional, the employee must report his injury within twenty-four (24) hours of the occurrence, if possible. The employer will direct the member to one of a panel of physicians to receive prompt and quality care. Any employee who was sent to the nearest appropriate medical facility must report to an approved panel physician for any further treatment or evaluation if applicable.

Section 7.17: Any employee of the Fire Department who is disabled as a result of a physical injury suffered in the discharge or performance of his duty, and follows the procedures outlined in Section 7.15 and Section 7.16 above, is entitled to receive the difference between his regular salary and injury time-loss payments during the period of disability up to one year from the date of occurrence, or, if sooner, until such time as he has been accepted for retirement by PFRS. Any injured time off must be authorized by one of the Regional's authorized panel physicians in order for the employee to be credited the time. If an employee does not seek such medical authorization in a timely manner, he will be paid his full salary only for the time in which he obtained the necessary approvals. He may, however, be entitled to collect his normal workers compensation benefit (70% of salary).

Section 7.18: A member failing to properly follow on-duty injury procedures will also not be covered for medical care received from physicians or facilities other than those designated by the Regional. Members failing to properly follow all procedures herein may also be subject to disciplinary action.

Section 7.19: If any member, in rendering assistance in another municipality as directed by the Regional, shall suffer any casualty or death, he or his designee or legal representative shall be entitled

to all salary, pension rights, worker's compensation and other benefits to which such member would be entitled if such casualty or death occurred in the performance of his duties in the Regional, rendering such assistance.

Section 7.20: An employee who is injured in the course of performing his duties, may be eligible for modified duty assignment dependent upon a determination by the employer's physician that the employee is capable of work. The administration reserves the sole right to determine whether a modified duty assignment is available within the Regional and to make assignments in the Regional's best interests. A modified duty assignment shall be assigned staff hours unless otherwise designated by the Executive Director. A modified duty assignment is a temporary work assignment and not intended to be indefinite in duration. An employee once assigned to modified duty who has been cleared to return to full duty or has reached a point of permanent restriction will have the modified duty terminated. Failure on the part of the member to accept a modified duty assignment, if eligible and selected, shall result in discipline, up to and including discharge.

The **Association** proposes the following contractual language:

Where an employee covered under this Agreement suffers a work connected injury or disability, the employer shall continue such employee at full pay, during the continuance of such employee's inability to work, for a period of up to one year. During this period of time, all temporary disability benefits accruing under the provisions of the Worker's Compensation Act shall be paid over to the employer.

The employer shall be required to present evidence by a certificate of a responsible physician that he is unable to work and, the employer may reasonably require the said employee to present such certificates from time to time.

In the event the employee contends that he is entitled to a period of disability beyond the period established by the treating physician, or a physician employed by the employer or by its insurance carrier, then, and in that event, the burden shall be upon the employee to establish such additional period of disability by obtaining a judgment in the Division of Worker's Compensation establishing such further period of disability and such findings by the Division of Workers' compensation, or by the final decision of the last reviewing court shall be binding upon the parties.

For the purposes of this Article, injury or illness incurred while the employee is attending an employer sanctioned training program, shall be considered in the line of duty.

In the event a dispute arises as to whether an absence shall be computed or designated as sick leave or as to an injury on duty, the parties agree to be bound by the decision of an appropriate Workers' Compensation judgement, or, if there is an appeal therefrom, the final decision of the last reviewing court.

An injury on duty requiring time off for treatment, recuperation or rehabilitation shall not be construed as sick leave or a sick leave occasion under the terms of the sick leave policy heretofore agreed upon between the parties.

The Regional begins its discussion of injury leave with review of the benefits available to Fire Officers under the previous agreements. According to the Regional, under the North Bergen contract, a Fire Officer on injury leave would receive his full salary. The Union City agreement included provision for the municipality to bear the cost of all medical, surgical, therapeutic and pharmaceutical bills, which were reasonable and fair in accordance with Workers' Compensation laws. The Association points out that in Weehawken Fire Officers were entitled to full pay up to one (1) year and hospital attention and in West New York, the municipality agreed to bear the cost of all necessary and authorized medical, dental, surgical, therapeutic and pharmaceutical bills.

The Regional points out that in order to be eligible for injury leave benefits, North Bergen required that its Fire Officers report an injury within twenty-four (24) hours, while Weehawken required that its Fire Officers report an injury

immediately. The Regional notes that paragraphs (3), (4), and (5) of the Association's proposal are not included in any of the predecessor agreements.

The Regional urges adoption of its proposal which places the responsibility of reporting the injury on the employee who was injured and compensates the employee with injury leave only after a physician determines that the injury was work related. Moreover, the Regional argues that it should not be required to pay the employee's full salary for a year because the employee is entitled to workers' compensation. The Regional adds that its proposal permits modified duty assignments at the discretion of Executive Director and urges its adoption.

The Association asserts that injury leave is a simple issue. According to the Association, the one-year entitlement it proposes is virtually identical to the benefit enjoyed in each of the municipalities included in the Regional. Emphasizing that every town provides up to one year injury leave without charging the time against available sick time, the Association asserts that each municipality included in the Regional provides full compensation for persons injured in the line of duty.

The Association explains that the text of the Weehawken and North Bergen contracts are virtually identical to its proposal in this case. According to the Association, the Union City provision guarantees that an officer injured in the

line of duty be provided “with semi-private accommodations”. Additionally, the Association points out that each of the contracts provide for complete coverage without a deductible, consistent with New Jersey Workers’ Compensation Law.

The Association argues that the language it proposes is balanced because it not only tracks the language of the predecessor contracts, but also provides the employer with a reasonable means of resolving disputes. According to the Association, those disputes many include whether or not an injury is duty connected, or the appropriate amount of time is required for the Fire Supervisors to return to duty. Under the Association’s proposal, the Workers Compensation court or the highest reviewing court, would handle any appeal.

The Association urges adoption of its proposal regarding injury leave on a verbatim basis into the new agreement.

Both parties agree that injured firefighters are entitled to their full salary for up to one year in the event they are injured in the line of duty. However, the parties disagree as to the standards and reporting requirements for coverage as well as to the details of benefits provided.

The Regional would have the injured firefighter report the injury immediately. The Regional needs to maintain records of each injury, for reporting purposes as well as to improve safety. However, the reference to

“immediately” report may not be reflective of the Regional’s intent to require prompt disclosure of injuries which occur in the line of duty. Further, a strict reporting deadline may be difficult to meet in the event of serious injury although the Regional has qualified its proposal to state “if possible.” Therefore, this paragraph, is awarded with modification clarifying the procedure for filing such reports.

The Regional proposes that firefighters injured while on duty be treated by a physician from the panel it would maintain. While some employees may elect not to do so, an employee should have the option to be treated by his designated physician and should not be restricted to those doctors on the Regional’s panel. Accordingly, the provision provides that employees may be treated by a physician of their own choosing with the authorization of reasonable requests by the Regional.

The Regional also seeks to limit benefits to 70% of salary for those injured firefighters who do not follow their physician’s recommendations for recovery. It is understandable that the Regional seeks to provide injured firefighters with added incentive to recover as quickly as possible. However, this requirement was not included in any of the previous agreements and there is no evidence of abuse of those prior provisions. For these reasons this proposal is not awarded.

The Association seeks compensation for private hospital rooms for those firefighters who require hospitalization. The Union City agreement included a provision for a semi-private room. Since a private room was not provided under any of the previous municipal agreements, such a benefit is not warranted and is not awarded.

The Regional seeks to include a provision giving it the option of creating a modified duty assignment and setting requirements for those assignments. None of the previous municipal agreements included such a provision. It is not included or awarded at this juncture because modified duty is discussed further when the Regional's more comprehensive modified duty proposal is discussed.

The Association would include a provision for the resolution of disputes concerning injury leave through the Workers' Compensation system. The Workers' Compensation system remains open to Fire Officers to the extent permitted by Workers' Compensation laws. However, none of the previous agreements included a separate dispute resolution system for injury leave and the Association has not demonstrated a need to add such a provision. Accordingly, the Association's proposal covering the resolution of disputes over injury leave is not awarded.

As discussed above, the injury leave provisions are awarded as follows:

An employee who is injured in the performance of duty should report, or cause to be reported, the accident to his supervisor as soon as is reasonably possible. The employee should complete a form provided for such injuries when he or his designee is able. If a member is injured on-duty and that injury is serious and/or life threatening, that member will be transported to the nearest appropriate medical facility.

- A. Whenever a member of the Fire Department is incapacitated from duty because of an injury sustained in the performance of his duty, he shall be entitled to injury leave with full pay during the period in which he is unable to perform his duties. Typically, that period shall not exceed one (1) year. The time may be extended beyond one (1) year at the sole discretion of the Department.
- B. To be eligible for injury leave benefits, both workers compensation benefit and the enhanced benefit to be paid by the Regional, the employee must report his injury as soon as is reasonably possible. The employer will direct the member to one of a panel of physicians to receive prompt and quality care. Any employee who was sent to the nearest appropriate medical facility must report to an approved panel physician for any further treatment or evaluation if applicable. A Fire Officer injured in the line of duty, reserves the right to be treated by a physician and/or surgeon of his own choice, whose fees will be paid by the Department, provided authorization is first obtained from the Department, which authorization shall not be unreasonably withheld. A Fire Officer who is treated by his own physician may be required to present a certificate indicating his continued inability to return to work from time to time. Nothing herein shall prevent the Regional from independently evaluating the medical condition of an employee injured in the line of duty.
- C. If any member in rendering assistance in another municipality shall suffer any casualty or death, he or his designee or legal representative shall be entitled to all salary, pension rights, workmen's compensation and any other benefits as if such casualty or death occurred in the performance of his duties for the North Hudson Regional Fire and Rescue Department.

JURY DUTY

The **Regional** proposes the following contractual language:

Section 7.27: Employees shall be granted time necessary for Jury Duty.

The parties stipulated to the Regional's proposed language covering jury duty and this stipulation has been incorporated into the Award.

LEAVE OF ABSENCE/EMERGENCY LEAVE

The **Regional** proposes the following emergency leave language:

Section 7.26: Employees may be granted emergency leave, without pay, for the serious illness requiring hospitalization in the immediate family including childbirth, necessitating the employee's presence at the discretion of the Chief of Department and the Executive Director, which discretion shall not be unreasonably or arbitrarily exercised.

The **Association** proposes the following leave of absence language:

An employee desiring a leave of absence from his employment shall apply for same in writing and may be granted a maximum leave of absence for one hundred eighty (180) days. Such leave of absence shall be without pay, but the employee shall retain all seniority rights.

The Regional limits its proposal for emergency leave to providing time off without pay for serious illness requiring hospitalization for members of the Fire Officer's immediate family and also for childbirth. In support of its proposal, the Regional reiterates that a Fire Officer assigned is actually scheduled to work for

only approximately ninety-one (91) days per annum, less vacation, and other leave time. According to the Regional, not including overtime and other emergencies, the average Fire Officer, after vacation, is actually scheduled to work less than eighty (80) tours per year, less sick leave days and other paid leave. Therefore, the Regional calculates that a Fire Officer might work less than seventy (70) tours per year. The Regional points out that its proposal is very similar to the provision in the Union City contract, which provides that an employee may be granted leave of absence upon serious illness of an immediate family member and does not include a provision for general leave of absence.

The Regional recognizes that Fire Officers work a twenty-four (24) hour shift and also recognizes that fire fighting can be a dangerous occupation, but emphasizes that Fire Officers receive sufficient time off, without the need for paid emergency leave. The Regional reiterates that if the Fire Officer does need additional time off, he has the ability to utilize other mechanisms to get time off, such as a mutual swap and vacation time.

The Association does not propose an emergency leave provision, but instead proposes a leave of absence provision. According to the Association, this proposal is taken from the Weehawken contract verbatim and would provide a non-paid leave in the discretion of the employer, with no guarantee that the leave would be granted. According to the Association, the employee must request the leave in writing. The Association cites unique medical circumstances,

personal problems, and service in the military reserves as situations that may be addressed through this proposal. The Association maintains that this language should not be considered economic because it is discretionary and does not guarantee rights. According to the Association, its proposal provides Fire Officers with the option to request a leave of absence.

The Regional notes that the West New York contract permitted a leave of absence without pay for employees with three years of service and the North Bergen without loss of regular pay in the event of serious illness or emergency in the immediate family necessitating the member's presence, and was limited to no more than three (3) twenty-four (24) hour tours per year.

This Regional urges rejection of the Association's leave of absence proposal, noting that there is no justification for its inclusion. Additionally, the Regional again reiterates that a Fire Officers receives a generous amount of paid time off. The Regional also reiterates that Fire Officers have other mechanisms to get time off, such as a mutual swap and vacation time.

The Regional proposes an unpaid emergency leave provision similar to that it proposed for firefighters. The Association proposed an unpaid leave of absence provision identical to that included in the previous agreement in Weehawken, but does not seek a separate provision for emergency leave. The previous municipal agreements included varied forms of paid emergency leave

as described above. Under this award, emergency leave will continue to be provided with pay, but, as in the firefighters' award, such paid time shall be limited to one paid tour. The granting of emergency leave, however, will rest with the Executive Director, who shall retain the authority to insure that such leave is legitimate but cannot be unreasonably denied. For purposes of this section, immediate family is defined as "spouse, child, parents, brother, sister, father-in-law and mother-in-law, or any other member residing in the household." That definition appropriately limits the use of emergency leave.

The Association's leave of absence proposal was unique to the previous Weehawken agreement. However, other previous agreements included unpaid leave of absences for specific reasons such as military leave. As was provided in the previous Weehawken agreement, opportunity for such an extended leave shall remain available upon a showing of good cause.

Accordingly, an Emergency Leave provision and a Leave of Absence provision are awarded and shall provide as follows:

Emergency Leave

Employees may be granted emergency leave, with or without pay, for the serious illness requiring hospitalization in the immediate family including childbirth, necessitating the employee's presence at the discretion of the Executive Director, which discretion shall not be unreasonably or arbitrarily exercised. Paid leave shall be limited to one tour annually.

For the purposes of this Article, immediate family is defined as spouse, child, parents, brother, sister, father-in-law and mother-in-law, or any other member residing in the household.

Leave of Absence

An employee desiring a leave of absence from his employment shall apply for same in writing. An employee must have completed three (3) full years of service to be eligible. Such application shall provide the reason that the leave is requested. Upon a showing of good cause, a leave of absence of up to one hundred eighty (180) days may be granted at the discretion of the Executive Director, which discretion shall not be unreasonably or arbitrarily exercised. Such leave of absence shall be without pay, but the employee shall retain all seniority rights.

OFF DUTY ACTION

The **Regional** proposes the following contractual language:

Section 7.19: If any member, in rendering assistance in another municipality as directed by the Regional, shall suffer any casualty or death, he or his designee or legal representative shall be entitled to all salary, pension rights, worker's compensation and other benefits to which such member would be entitled if such casualty or death occurred in the performance of his duties in the Regional, rendering such assistance.

The **Association** proposes the following contractual language:

Any action within the State of New Jersey taken by a member of the Department on his time off, which would have been proper action if taken by the employee on active duty, if present or available, shall be considered proper Fire Department action, and the employee shall have all of the rights and benefits concerning such action as if her were then on active duty. This excludes an employee regularly performing duties as a member of a volunteer fire company.

The Regional points out that a provision relating to off-duty injury can only be found in the Weehawken contract. The Regional asserts that its proposal establishes that a Fire Officer will be compensated for injuries incurred within the scope of his employment. According to the Regional, its proposal provides that compensation will be provided if the officer was working at the direction of the Regional. In contrast, the Regional emphasizes that the Association's proposal would require payments for injuries that could occur outside the scope of employment, and contrary to established workers' compensation law. The Regional requests that its provision regarding off-duty action be adopted.

This Association points out that its proposal comes from the off duty coverage provisions of the North Bergen agreement and parallels the injury leave provision. Asserting that it is closely related to the injury leave provision, the Association asserts that it has chosen to separate it from the injury leave provision to accentuate the individual needs for affected employees. The Association emphasizes that emergency service personnel, unlike other public employees, may take action while off duty in order to protect life and prevent injury. Asserting that where employees covered by this contract are off duty and see a person in need of assistance, they are morally bound, if not duty bound, to assist and could place them in a dangerous situation, such as at a fire scene. The Association emphasizes that assistance in such a situation should not present any level of exposure to the detriment to the employee. The Association argues that this provision guarantees protection where officers act off duty in the

same fashion as they would have acted on duty. The Association highlights the provision in its proposal that sets this specific standard, stating that action "... which would have been proper action if taken by an employee on active duty, if present or available, shall be considered proper Fire Department action ...". Asserting that the standard is very clear, the Association urges the adoption of its proposal.

This provision is modeled after a similar provision in the previous Weehawken agreement. This provision would provide Fire Officers with proper protection when they respond to emergencies throughout the State when off duty. A similar provision has been awarded in the companion award and is awarded here as well.

Any action within the State of New Jersey taken by a member of the Department on his time off, which would have been proper action if taken by the employee on active duty with the NHRF&R, shall be considered proper Fire Department action, and the employee shall have all of the rights and benefits concerning such action as if he were then on active duty. This excludes an employee regularly performing duties as a member of a volunteer fire company.

OUT OF TITLE WORK

The **Association** proposes the following contractual language:

Whenever an employee is required to work out of title, he shall receive the pay for that higher rank in which he is working upon assumption of the duties of his/her rank and the employer shall not

defeat the intent of this clause by shifting two (2) or more employees to cover the higher rank in question.

The Association proposes this language, noting that it is similar to paragraph B of its Promotion and Vacancies proposal, but covers the out of title work issue without the benefit of the civil service test. Like the Promotion and Vacancies proposal, the import of this proposal is that employees working out of title should be paid at the rate for the work performed. Noting that it is possible to consider this as single proposal with the Promotion and Vacancies proposal, the Association asserts that the language it proposes is essential to the agreement.

The Association highlights that this proposal applies to employees working out of title and would apply the work performed test to those employees. The Association explains that if an employee is working in the next higher position, he should be paid at the higher rate regardless of whether he is filling a vacancy or not.

Acknowledging that PERC held that “[c]ompensation for temporary assignments to replace higher officers is mandatorily negotiable,” North Hudson Regional Fire and Rescue, P.E.R.C. NO. 2000-78, 27 NJPER 184, 186 (¶ 31075 2000), the Regional argues that the Arbitrator should reject this proposal because it would expand upon how officers received out-of-title pay pursuant to previous agreements.

The Regional points out that under the North Bergen contract, an employee serving in a temporary rank was paid at the rate for the higher rank after temporarily serving fifteen (15) consecutive working days of satisfactory service. The Regional also cites the Weehawken contract, which provides that an employee serving in a higher rank received the rate of pay of the position after serving in it for thirty (30) days. The employee received retroactive pay to the first (1st) day of service if he or she worked in the higher rank for more than sixty (60) days. Likewise, the Regional notes that under the West New York contract, an employee serving in a higher rank did not receive additional compensation if the work in the higher rank was temporary. However, if the work in the higher rank was more permanent, such as covering for someone on catastrophic sick leave or covering for someone who has retired, the employee was compensated at the rate of the higher rank for the time period he was performing the duties of the higher rank at fifty percent (50%) of the difference between the higher rank's base pay and the assigned employees rate of pay.

The Regional emphasizes the testimony of Cpt. McGorty where he acknowledged that in Weehawken, there was no additional rate of pay if there was a temporary vacancy by virtue of a sick leave situation. The Regional also emphasizes Cpt. McGorty's testimony that he has sought unsuccessfully to gain the benefit provided by the Association's proposal at least three (3) times in negotiations in Weehawken. Accordingly, the Regional urges that the Arbitrator reject this proposal because it would significantly expand how officers receive

out-of-title pay and the Association did not offer any valid justification as to why the Fire Officers should receive out-of-title pay for limited temporary work.

Turning to the second portion of the Association's proposal, the Regional cites PERC's determination that that "it is at most permissively negotiable and the [Regional] need not agree to have it considered by an interest arbitrator." North Hudson Regional Fire and Rescue, P.E.R.C. NO. 2000-78, 27 NJPER 184, 186 (¶ 31075 2000). The Regional seeks rejection of this proposal since it has not agreed to have it considered by the Arbitrator.

The Association proposes that Fire Officers filling higher positions on an acting basis be paid at the highest rate for the position in which they are acting and that the Regional be prohibited from assigning work in such a manner to avoid the payment of acting pay. The Regional objects to these proposals asserting that the second portion of the Association's proposal is merely permissively negotiable and that the Association's proposal exceeds acting pay provisions included in any of the previous agreements.

The Regional seeks to retain its authority to assign with no additional pay for acting in a higher position. The Association seeks greater benefits in the event of a temporary assignment to a higher rank than was provided under any of the previous municipal agreements, while the Regional would provide no additional compensation for acting in a higher rank on a temporary basis.

Weehawken and West New York provided some form of acting pay for those working in a higher rank in an acting capacity. In Weehawken, the Fire Officer received the rate of pay for the position in which he was acting after having served in that position for 30 days. If the Fire Officer served in an acting capacity for 60 days, then he would receive the salary for the position in which he was acting retroactive to the first day of the assignment. In West New York, a Fire Officer assigned to an acting position on a temporary basis to fill in during sick leave or vacation, did not receive additional compensation. However, a West New York Fire Officer assigned to an acting position in a more permanent situation such as catastrophic sick leave or retirement, received 50% of the difference between the higher rank's base pay and the employee's rate of pay, including longevity. The Association's proposal, which would provide that such assignments be paid at the highest step for the higher rank well exceeds the benefits provided by the previous municipal agreements.

The previous agreement in West New York protected management's right to assign Fire Officers to acting duty as well as providing additional compensation for working in a higher rank. Accordingly, a provision similar to that included in the previous West New York agreement as well as one similar to the provision awarded in the companion case involving the Regional's Firefighters is awarded as follows:

When an employee is assigned by competent authority to work out of title at a rank higher than his regular rank, beyond two (2)

consecutive tours, compensation shall be provided upon appointment to act in the higher rank, which compensation shall be an additional one-half (1/2) the salary rate between the highest rate for the employee's permanent rank and the lowest rate for the rank in which the employee is acting on the existing salary schedule.

CLOTHING AND UNIFORM ALLOWANCE

The **Regional** proposes the following contractual language:

Section 15.0: Fire Officers shall receive an annual \$300.00 bank for the repair and replacement caused by normal wear and tear of station wear. Upon presentation of receipts for the maintenance or replacement of worn uniforms, the employee will be reimbursed for such expenses up to the limit provided above.

Section 15.1: Employees must return all turn out gear and other equipment issued by the Regional upon retirement or termination.

The **Association** proposes the following contractual language:

- A. The employer will pay each employee the sum of Six Hundred Fifty (\$650.00) dollars as an annual clothing maintenance allowance which shall be payable no later than November 15th annually.
- B. Whenever the employer determines that it desires to change the uniform or any part thereof, it shall be the employer's obligation to provide to each employee such modified or changed uniform free of charge. Utilization of this paragraph shall not diminish the allowance set forth in this Agreement.
- C. The term "uniform" as utilized in this Article shall mean both dress uniform and work uniform.
- D. Uniforms damaged in the line of duty shall be replaced at the employer's expense provided such damage has not occurred due to the employee's negligence.
- E. Notwithstanding the provision of Paragraphs A & D above, all OSHA required items shall be supplied, maintained and replaced by the employer in a prompt and timely manner.

Included within the employer obligation is the supplying of OSHA approved station wear and turnout gear.

The Regional reviews the clothing and uniform allowances included in the predecessor agreements, noting that North Bergen provided for a \$590.00 clothing allowance through a voucher system. In Union City, according to the Regional, the clothing allowance was negotiated out of the agreement effective January 1, 1993 and the \$650.00 formerly attributed to clothing allowance was included in the employee's base salary. The Regional notes that Weehawken provided for a \$425.00 annual clothing allowance and West New York purchased station wear and protective gear for its Fire Officers. In contrast, the Regional notes that the Association's proposal is 10% above the allowance set forth in the North Bergen contract, and thirty-one (31%) above the amount set forth in the Weehawken contract.

Turning to the other portions of the Association's proposal, the Regional notes that the North Bergen contract stated that clothing lost, destroyed or damaged by the negligence of the employee would be replaced at his or her own expense. The Regional acknowledges that the Weehawken contract provided that uniforms damaged in the line of duty would be replaced at the Town's expense, provided that such damage did not occur due to the employee's negligence. The Regional notes that paragraph (E) of the Association's proposal is not contained within any of the four (4) individual municipal contracts.

According to the Association, the language of the uniform allowance clause above stated is based upon the Weehawken contract, and the amount of the allowance is taken from the uniform allowance entitlement in the Union City contract. The Association notes that the amount it proposes is neither the highest nor the lowest, since the clothing allowance in the Guttenberg contract is considerably higher and the allowance in the Weehawken contract is less. The Association points out that the language of the several contracts is similar. The Association notes that paragraph B, which is based upon the Weehawken contract, is a clear statement of PERC law. The Association maintains that unilateral change, while it may involve employer prerogatives, must be negotiated and ultimately paid for by the non-changing party. For example, the Association explains that a public employer may change the color of uniform, which may be categorized as a “managerial prerogative”, but the impact of that change should not rest with the employee and the employer may compensate for the change, consistent with the exercise of the prerogative. The Association notes that the language of paragraph D is common and is found in the other contracts, such as West New York which provides a similar damaged goods replacement provision. The Association maintains that paragraph E is an expression of the central New Jersey P-OSHA requirements. According to the Association, these standards are essential and codify standing operating procedures.

This section addresses issues concerning the provision and replacement of clothing and turnout gear as well as the clothing maintenance allowance. Both parties have proposed a clothing maintenance allowance. The rate proposed by the Association is the amount currently received in Union City. The allowance should be the same for all Fire Officers and, given the passage of time, the Union City amount is reasonable and is hereby awarded. The allowance of \$650 shall be effective July 1, 2002.

The Regional and the firefighters have stipulated to language requiring the return of turnout gear and equipment upon retirement or termination. The Regional has also stipulated to a provision requiring firefighters to cover the replacement cost of equipment lost due to negligence or intentional damage to equipment. Those stipulations, which provide as follows, should also apply to Fire Officers as well and are awarded.

Employees must return all turn out gear and other equipment issued by the Regional upon retirement or termination.

If a Fire Officer loses equipment due to negligence, such Fire Officer shall be charged with the cost of replacement. Intentional damage to equipment shall result in discipline and charge for the cost of equipment.

Additionally, the Association proposes that when the Regional determines to provide new uniforms or equipment, that the Regional will assume the responsibility for providing each Fire Officer with the uniform at no cost to the Fire Officer and separately from the clothing maintenance allowance. Since the

clothing maintenance allowance is an allowance for the maintenance of existing uniforms and does not cover new uniforms and equipment, the Association's proposal is warranted. Accordingly, a provision requiring that when the Regional determines to change or modify uniforms, it will provide new uniforms to Fire Officers at no additional cost to them is awarded.

The Association's proposal that all OSHA required items shall be supplied, maintained and replaced by the employer in a prompt and timely manner is not included in any of the previous agreements with the municipalities and is not awarded here.

Accordingly, the Clothing and Equipment provision is awarded as follows:

The employer agrees to pay all employees covered by this agreement the amount of six hundred and fifty (\$650.00) dollars per year as a clothing maintenance allowance. This payment is to be made on or before July 1st of each year commencing July 1, 2002.

The Employer agrees to furnish, at no cost to the employee and assure the use of, required protective clothing, and equipment as set forth in N.J.A.C. 12:100 et seq.

Employees must return all turn out gear and other equipment issued by the Regional upon retirement or termination.

If a Fire Officer loses equipment due to negligence, such Fire Officer shall be charged with the cost of replacement. Intentional damage to equipment shall result in discipline and charge for the cost of equipment.

Clothing lost, destroyed or damaged during the course of duty shall be replaced at the Department's expense. The employee, absent extenuating circumstances, must report any damaged clothing to the fire headquarters within twenty-four (24) hours. Employees

must present damaged clothing, helmet, boots, coats or gloves in order to verify loss.

Whenever the Employer determines that it desires to change the uniform or part thereof, it shall be the employer's obligation to provide to each employee such modified or changed uniform free of charge. Utilization of this paragraph shall not diminish the clothing maintenance allowance set forth in this agreement.

FACILITIES/SANITARY AND SAFETY CONDITIONS

The **Regional** proposes the following contractual language:

Section 16.0: North Hudson Regional Fire & Rescue desires to maintain a safe place of employment for all Fire Officers, and to that end management shall make all reasonable provisions necessary and in accordance with the laws of New Jersey for the safety of employees in the performance of their work. The Regional shall provide equipment as approved by New Jersey's statutory requirement for all fire personnel.

Section 16.1: All sanitary facilities in the firehouse, such as toilets, shower, wash basins, etc. shall be kept in good working order.

The **Association** proposes the following contractual language:

1. All sanitary facilities in the firehouse such as toilets, shower, wash basins, etc. shall be kept in good working order.
2. The employer agrees to provide the following furnishings and replace such furnishings when deemed essential: lockers and bedding, for each employee plus an adequate amount of chairs, tables and lunch facilities. Clean linen shall be provided every three (3) weeks. Mattresses and pillows shall be replaced as their wear deems necessary.
3. The existing firehouses are to be reconditioned so as to be livable and the employer shall paint and plaster where and when necessary.
4. The employer agrees to provide employees with a reasonable and safe place for their work efforts and further

agrees to keep all equipment in safe and good operating condition so as to insure the safety of the employees.

5. In no circumstance shall any condition be permitted to exist which is in violation of any OSHA standard or below any OSHA minimum.

The Regional points out that its proposal and the Association's proposal are very similar as both provide for the safety of employees. However, the Regional disagrees with the Association's proposal to the extent that it adds that the "[Regional] agrees to provide the following furnishings and replace such furnishings when deemed essential: lockers and bedding, for each employee plus an adequate amount of chairs, tables and lunch facilities. Clean linen shall be provided every three (3) weeks. Mattresses and pillows shall be replaced as their wear deems necessary." The Regional notes that the Association did not offer evidence that would justify the inclusion of this provision in the new contract. Additionally, the Regional points out that other Fire Officers' contracts do not include such a clause. For example, the Regional cites the New York City contract which provides that "[a]ll quarters shall have adequate heating, hot water, sanitary and sanitation facilities." For these reasons, the Regional urges adoption of the Regional's entire "safety and facilities" proposal.

The Association points out that this proposal is taken from the Weehawken agreement and is supported by the previously existing West New York agreement. According to the Association, its proposal is basic language found in the contracts generally that provides and guarantees maintenance of

essential facilities. The Association notes that the proposal addresses both emergency equipment as well as basic living conditions. Emphasizing that the 24 hour schedule requires that fire personnel live at the fire station, the Association points out that these facilities become their homes for substantial periods. Accordingly, the Association asserts that fire hours must be maintained properly and while daily maintenance may be handled by employees, the provision of essential facilities such as toilets, showers, and basic furnishings are employer responsibilities. According to the Association, its proposal would provide a standard to assess these facilities and a base line for any assertion of inadequate standards that may occur in the future. The Association maintains that the municipalities provided these essentials in the past and the Regional provides them at present, but the Association seeks to ensure that adequate accommodations continue into the future. The Association asserts that the requirements that equipment in safe and good operating condition and that essential facilities be maintained are not overreaching and should be awarded.

The Association emphasizes the last paragraph of its proposal that requires that Federal standards be maintained. The Association asserts that these standards are important because they provide once again a standard for enforcement that will not require federal action, great expense, or delay for compliance.

Both parties propose safety and facilities proposals that would require the safety and maintenance of fire facilities and equipment. The Regional's proposal is very general with specifics only regarding sanitary facilities. The Association's proposal is very specific as to each and every aspect of fire station facilities and equipment. Additionally, paragraph 5 of the Association's proposal would require safety reporting standards in excess of those required by New Jersey statutes and regulations. This Award enumerates, in greater detail than would the Regional, its responsibility to maintain a safe and clean work place as well as safe equipment. However, this Award does not require the reporting of equipment maintenance records and results to the Association and does not specify standards for repainting of furniture and refurbishment of fire stations.

North Hudson Regional Fire & Rescue desires to maintain a safe place of employment for all Fire Officers, and to that end management shall make all reasonable provisions necessary and in accordance with the laws of New Jersey for the safety of employees in the performance of their work. The Regional shall provide equipment as approved by New Jersey's statutory requirement for all fire personnel.

- A. All sanitary facilities and equipment in each firehouse including, but not limited to, toilets, showers, and washbasins shall be furnished and maintained in good working order by the Department.
- B. The Department agrees to provide employees with a reasonable and safe place for their work efforts and further agrees to keep all equipment in safe and good operating condition so as to insure the safety of the employees.

DRUG & ALCOHOL TESTING

The **Regional** proposes the following contractual language:

Section 18.0: The Association agrees to the drug and alcohol testing policy and procedures as described in Appendix A.

The **Association** proposes the following contractual language in paragraph 9 of its proposal on Departmental Investigations:

No employee covered by this Agreement shall be subjected to any urinalysis or blood screening unless one of the two circumstances exist: (1) Where the employer has probable cause to suspect that there is a job-related individualized impact with respect to the specific employee being tested; (2) Where the urinalysis or blood screening is done as part of a bona fide annual physical examination which is done for the Department.

The Regional maintains that it has a managerial prerogative to conduct the drug and alcohol testing. See Borough of Hopatchong, P.E.R.C. NO. 91-60, 17 NJPER 62 (¶ 22028 1990). According to the Regional its drug testing policy described in Appendix A is the "Attorney General's Law Enforcement Drug Testing Policy," as of September, 1998. The Regional asserts that this policy, which is in effect in municipal police departments, provides that current law enforcement employees should undergo screening whenever there is individualized reasonable suspicion that the officer is unlawfully using drugs.

The Regional reviews the state of the law regarding drug testing, emphasizing that drug testing as part of an annual physical is constitutional and that the public employer has an important interest in assuring that its law

enforcement personnel abstain from drug use because it can impair job performance and put the public at risk. The Regional also acknowledges that the courts held that the reasonable individualized suspicion test accommodates the legitimate interest of employee privacy without unduly restricting the public employer's opportunity to monitor and control the use of drugs by its employees. The Regional notes that the Association also did not offer any evidence establishing why the Arbitrator should not grant the Regional's proposal. Accordingly, the Regional maintains that its proposal must be adopted because it has a managerial prerogative to conduct the drug and alcohol testing.

The Association did not offer specific rationale in support of its proposal or against the Regional's proposal.

The enormous responsibilities of the fire service, the expensive nature of equipment and the need for safety of the citizens and Fire Officers and firefighters are sufficient reason for testing. The policy requires "individualized reasonable suspicion" to be present. Although the decision to test employees for drugs is a managerial prerogative, the Regional seeks to include specific procedures for that drug testing in the agreement. Ensuring that employees are aware of the possibility of drug testing and the procedures for it is likely to act as a deterrent to use of illegal substances and affords protection by having the procedures included in the Agreement. Fire officers who are impaired by the use of drugs or alcohol are more likely to endanger themselves, other firefighters and

the public. Accordingly the Regional's drug testing proposal is in the public interest and is awarded although with minor language modification.

The Regional may administer drug and alcohol testing policy and procedures as described in Appendix A, which is incorporated herein by reference.

Appendix A, the Attorney General's Law Enforcement Drug Testing Policy" as revised, is not reproduced here and is incorporated by reference.

OUTSIDE EMPLOYMENT

The **Regional** proposes the following contractual language:

Section 18.2: Employees gainfully employed other than with the Regional must, as soon as reasonably practicable, advise the Regional of such employment in writing. Such employment should be compatible with the employee's work within the Regional and in no way detract from the efficiency of the employee's work with the Regional. Such employment shall not interfere with overtime required by the Regional. The Regional may, upon reasonable grounds, revoke permission to hold outside employment at any time based upon the criteria outlined above.

Section 18.3: An employee who is on sick leave or a compensable work-related injury leave may not work at any other employment during such leave.

The Regional characterizes the first paragraph of its proposal as a reporting system to ensure that it has a proper record. The Regional explains that it requires that Fire Officers who hold second jobs on their days off from the Regional notify the Regional as to their employer and as to the type of work they

are doing. The Regional maintains that its outside employment proposal is compatible with their official duties and designed to ensure the safety of the operation of the Regional and its employees by monitoring Fire Officers' outside employment so that it does not adversely affect their ability to perform fire fighting duties. The second paragraph of the Regional's proposal covers those employees who are receiving benefits from the Regional while on sick leave or a compensable work-related injury leave and provides that those employees cannot participate in outside employment during that time to ensure that the Fire Officer spend his full time recuperating so that he can return to work.

The Regional notes that the Association did not propose a provision regarding "outside employment" and did not offer evidence as to why the Regional's proposal should not become part of the new contract.

Finally, the Regional asserts that because it is the government's managerial prerogative to determine policy is non-negotiable and non-arbitrable its proposal should be awarded.

The Association asserts that the Regional has failed to produce evidence that outside employment has resulted in problems in the workforce and urges that its outside employment proposal be denied. Additionally, the Association finds unacceptable the Regional's effort to impose restrictions on how a Fire Officer spends his off duty time.

The Regional seeks to regulate outside employment of its Fire Officers to ensure that their outside employment does not interfere with their performance as Fire Officers. The Association objects to any regulation of employees on their off-duty time. However, limitations on whether employees may work at other jobs while on compensable sick or injury leave from the Regional, as well as limitations that assure that the employment does not conflict or interfere with job duties for the Regional are reasonable limitations as previously recognized in the North Bergen agreement. A provision similar to that included in the North Bergen agreement is awarded here:

- A. Employees shall be entitled to engage in any lawful activity and obtain any lawful work while off-duty.
- B. It is understood that full-time employees will consider their position with the Regional as their primary employment. Any outside employment or activity must not interfere with the employee's efficiency in his position with the Regional and must not constitute any conflict of interest.
- C. An employee who is on sick leave or a compensable work-related injury leave may not work at any other employment during such leave.

PERSONNEL FILES

The **Regional** proposes the following contractual language:

Section 18.4: A separate personnel file shall be established and maintained for each employee covered by this Agreement. Personnel files are confidential records and shall be maintained by the Administration.

Section 18.5: Any employee in the bargaining unit may review their own personnel file provided reasonable notice by written request is made to the Regional. Each review shall be conducted in the presence of management personnel and every employee shall be required to sign an entry record on the occasion of his review.

Section 18.6 Whenever a written complaint concerning an employee or his actions is to be placed in his personnel file, a copy shall be given to said officer, and he shall be given the opportunity to rebut if he so desires, in writing, within fifteen days and said rebuttal shall be placed in his file.

The **Association** proposes the following contractual language:

A personnel file shall be established and maintained for each employee covered by this Agreement. Such files are confidential records and shall be maintained in the office of the Chief of the Department, and may be used for evaluation purposes.

Upon advance notice and at reasonable times, any member of the Department may at any time review his personnel file. However, this appointment for review must be made through the Chief of the Department or his designated representative.

Whenever a written complaint concerning an officer of his actions is to be placed in his personnel file, a copy shall be made available to him and he shall be given the opportunity to rebut it if he so desires, and he shall be permitted to place said rebuttal in his file. When the employee is given a copy of the complaint, the identification of the complainant shall be excised. However, if any disciplinary action is taken based on any complaint, then the Employee shall be furnished with all details of the complaint, including the identity of the complainant.

All personnel files will be carefully maintained and safeguarded permanently, and nothing placed in any file shall be removed therefrom. Removal of any material from a personnel file by any member of the force shall subject that member to appropriate disciplinary action. It is acknowledged that where a document is placed in a file (reprimand) for a fixed period to be removed if there are no further infractions, he's not restricted by this Article.

The parties stipulated to the Regional's proposed language covering personnel files and this stipulation has been incorporated into the Award.

NON-DISCRIMINATION

The **Regional** proposes the following contractual language:

Section 19.0: In accordance with applicable state and federal law, neither the Regional nor the Association shall discriminate against any employees covered by this agreement because of race, color, sex, religion, national origin, or Association membership.

The parties stipulated to the Regional's proposed language covering non-discrimination and this stipulation has been incorporated into the Award.

FULLY BARGAINED PROVISIONS

The **Regional** proposes the following contractual language:

Section 20.0: This Agreement represents and incorporates the complete and final understanding and settlement by the parties on all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such issue, whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both parties at the time they negotiated and signed this Agreement.

At the outset, the Regional notes that the Association has not proposed a fully bargained provision, nor has it offered evidence to explain why this proposal should not be adopted. Additionally, the Regional points out that the fully

bargained provisions of the North Bergen and Union City contracts are identical to the Regional's proposal except that North Bergen also includes the following sentence: "Changes in existing benefits will be discussed with the Association prior to implementation."

The Regional's "fully-bargained provisions" proposal is identical to the provision included in the previous North Bergen and Union City agreements. The previous agreements in Weehawken and West New York did not include such a provision.

There is merit to the Regional's Fully Bargained provision to the extent that neither the Regional nor the Association should have a unilateral right to demand negotiations during the term of the Agreement over issues which were or could have been the subject of negotiations. The purpose of the Agreement would be subverted by attempts to do so. This provision, however, cannot be construed to extend to waive the Association's statutory right to negotiate over issues which flow from the Regional's right to propose new rules, modifications of existing rules governing working conditions. This provision must also be read in *para materia* with Article - Maintenance of Standards. Accordingly, I award the Regional's proposal.

Section 20.0: This Agreement represents and incorporates the complete and final understanding and settlement by the parties on all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will

be required to negotiate with respect to any such issue, whether or not covered by this Agreement. This provision cannot be construed to waive the Association's statutory right to negotiate over issues which flow from the Regional's right to propose new rules, modifications of existing rules governing working conditions.

ASSIGNMENTS AND TRANSFERS

The **Regional** proposes the following contractual language:

Section 14.0: The assignment and transfer of Fire Officers shall be solely the responsibility of the Executive Director. It shall be understood nothing shall prohibit any employee from submitting, through proper channels, a written request for transfer to a new or vacant position for which that employee is qualified.

This is the lone proposal on which both parties are silent. Accordingly, it must have merit and is awarded.

SEVERABILITY & SAVINGS

The **Regional** proposes the following contractual language:

Section 22.0: If any provision of this Agreement or any application of this Agreement to any employee, member or group of employees or members is held to be invalid by operation of law, by any Court, or any other tribunal of competent jurisdiction, then such provision and/or its application shall be deemed inoperative; however, all other provisions and applications contained herein shall continue in full force and effect, and shall not be effected thereby.

The parties have agreed to include the Regional's proposal covering Severability and Savings in their agreement and that stipulation is included in this Award.

NO WAIVER

The **Regional** proposes the following contractual language:

Section 23.0: Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement or exercise one's rights pursuant thereto shall not be deemed a waiver thereof. This Agreement is not intended and shall not be construed as a waiver of any right or benefit to which the parties herein are entitled. This Agreement may only be modified or changed by a written amendment and signed by both parties.

The parties have agreed to include the Regional's No Waiver proposal in their agreement and that provision is included in this Award.

DURATION OF AGREEMENT

The **Regional** proposes the following contractual language:

Section 24.0: The Provisions of this Contract shall be in force as of formal ratification of this Contract by both parties and shall remain in force until December 31, 2004, until a successor Agreement is executed.

The **Association** proposes the following contract language:

This Agreement shall have a term from _____ through _____.

If the parties have not executed a successor agreement by _____, then this Agreement shall continue in full force and effect until a successor agreement is executed.

Negotiations for a successor agreement shall be in accordance with the rules of the Public Employment Relations Commission.

During this proceeding, the parties have stipulated to the duration clause as proposed by the Union and it is included in this Award. I supplement that stipulation with the dates of the contract.

This Agreement shall have a term from July 1, 1999 through June 30, 2004.

If the parties have not executed a successor agreement by June 30, 2004, then this Agreement shall continue in full force and effect until a successor agreement is executed.

Negotiations for a successor agreement shall be in accordance with the rules of the Public Employment Relations Commission.

MAINTENANCE OF OPERATIONS

The **Regional** proposes the following contractual language:

Section 21.0: It is recognized that the need for continued and uninterrupted operation of the Regional is of paramount importance to the citizens of the respectively represented cities, and that there should be no interference with such operation.

Section 21.1: The Association covenants and agrees that during the term of this Agreement neither the Association nor any person acting in its behalf will cause, authorize, or support, nor will any of its members take part in, any strike, i.e., the concerted failure to report for duty, or other concerted job actions, including willful absence of an employee from his position, or stoppage of work or abstinence in whole or in part, from the full, faithful and proper performance of the employee's duties of employment, work stoppage, slowdown, walkout or other job action against the Employer.

Section 21.2: Nothing contained in this Agreement shall be construed to limit or restrict the Regional in its rights to seek and obtain judicial relief as it may be entitled to have in law or in equity

for injunction or damages, or both, in the event of such breach by the Association or its members.

The Regional asserts that the purpose of this proposal is to set forth a contractual provision avoiding strikes and work stoppages. The Regional maintains that this clause benefits the interests of the public and ensures that there will be no interruption of fire and rescue services. According to the Regional, this clause is consistent with the legislative purposes behind the interest arbitration statute because Fire Officers do not have the right to strike.

The Association objects to the inclusion of a maintenance of operations provision in the agreement.

This first section of the proposed provision clarifies the existing prohibition against strikes and work stoppages and is awarded.

It is recognized that the need for continued and uninterrupted operation of the Regional is of paramount importance to the citizens of the respectively represented cities, and that there should be no interference with such operation.

The Association covenants and agrees that during the term of this Agreement neither the Association nor any person acting in its behalf will cause, authorize, or support, nor will any of its members take part in, any strike, i.e., the concerted failure to report for duty, or other concerted job actions, including willful absence of an employee from his position, or stoppage of work or abstinence in whole or in part, from the full, faithful and proper performance of the employee's duties of employment, work stoppage, slowdown, walkout or other job action against the Employer.

The second section of the proposed provision is a mere restatement of the Regional's legal rights and need not be restated in the Agreement. It is not awarded.

PROMOTIONS AND VACANCIES

The **Regional** proposes the following contractual language:

Section 13.1: The Regional shall attempt to maintain a New Jersey Department of Personnel list from which appointment and promotional vacancies shall be filled in accordance with New Jersey Department of Personnel Rules and Regulations.

The **Association** proposes the following contractual language:

- A. Promotions
In the event of vacancies in the ranks covered by this Agreement, such vacancies shall be filled pursuant to Paragraph B of this Article.
- B. Vacancies
In the event a vacancy occurs, and no Civil Service List for the rank exists, the employer shall ask the Civil Service to call an examination for the position. If it is necessary to appoint a member to act or to be in charge due to a vacancy, the member serving in such temporary rank shall be paid at the rate for the rank in which he is temporarily serving upon assumption of the duties of the rank.

The Regional discusses the difference between the previous agreements and the Association's proposal, noting that paragraph (B) of the Association's proposal is similar to the language found in the North Bergen agreement, except that the North Bergen agreement stated that the member serving in the

temporary rank in which he was temporarily serving would be paid at the rate for the rank only after fifteen (15) consecutive working days of satisfactory service.

The Regional notes that Weehawken's contract provided that vacancies would be filled by selection of eligible employees from a promulgated New Jersey Department of Personnel list and that an employee serving in a higher rank received the rate of pay of that rank only after serving in the position for thirty days. However, the Regional notes that under the Weehawken agreement, the employee received retroactive pay to the first day of service if he or she worked in the higher rank for more than sixty days. Turning to the West New York contract, vacancies and promotions were made in accordance with prevailing New Jersey Department of Personnel laws and regulations and an employee serving in a higher rank did not receive compensation for such for if the work in the higher rank was temporary. However, if the work in the higher rank was more permanent, such as covering for someone on catastrophic sick leave or covering for someone who has retired, the employee was compensated at 50 percent of the difference between the rate of the higher rank and the assigned employee's rank for the time period he was performing the duties of the higher rank.

The Regional points to Captain Zavardino's testimony that a "waiver", where a Fire Officer seeking a promotion had to waive a salary increase for 12-18 month, was used in North Bergen.

The Regional argues that the Association's proposal is not negotiable because it impinges on the Regional's prerogative to determine whether and when to fill a vacancy. Town of Kearny, P.E.R.C. NO. 2001-58, 27 NJPER 189 (¶ 32063 2001) and because it is pre-empted by Civil Service Statute. The Regional also asserts that the Association's proposals would impede the Regional's prerogative in selecting candidates and determining promotional criteria. See Edison Township, P.E.R.C. NO. 98-14, 23 NJPER (¶ 28235 1997). The Regional also argues that the Association did not provide support for including this proposal in the agreement.

According to the Association, this proposal is taken verbatim from the North Bergen Fire Supervisors Contract, and it closely parallels the thrust of the language in the Weehawken contract. Describing the two specific parts of this proposal, the Association explains that in paragraph B, where a vacancy exists and no civil service lists exists for that rank, then the employer shall call for a test. According to the Association, the second portion of this proposal is that persons serving in a temporary rank "... shall be paid at the rate for the rank in which he is temporarily serving upon assumption of the duties of the rank." The Association maintains that first portion consistent with civil service law. Acknowledging that there are times when there is a period where no test results exists, the Association maintains that its proposal only requires the employer to apply for civil service testing to take place. According to the Association, the

proposal would avoid unnecessary delay in making a person permanent in the new position.

Turning to the out of title work portion of its proposal, the Association asserts that it guarantees proper pay for the service performed and is consistent with the contractual precedent for virtually every member of the regional department. The Association notes that in response to the employer's scope petition, PERC ruled that the Association's proposal was mandatorily negotiable to the extent that it increased the rate of compensation for persons working out of title. (North Hudson Regional Fire Rescue NJPER 2000-78, March 31, 2000). The Association emphasizes that additional money is required only when an employee assumes the duties of the higher rank. The Association notes that its proposal does not select any person to serve nor does it in any way impinge on the employer's managerial prerogatives. Relying upon Cpt. McGorty's testimony, the Association asserts that its proposal is the standard and practice as it existed both before regionalization and since regionalization.

The Regional's proposal that it will attempt to maintain a Department of Personnel list for promotional purposes and that promotional vacancies will be filled in accordance with Department of Personnel Rules and Regulations is similar to the provision included in the firefighter's agreement. The Association's proposal that the Regional call for an exam if no Civil Service list for the vacant position exists is rendered unnecessary by the Regional's proposal to maintain a

Department of Personnel list for promotional purposes. The Regional's proposal is awarded.

The Association proposes that Fire Officers receive acting pay when serving temporarily in a higher rank. The previous agreement in North Bergen provided such a benefit after fifteen (15) consecutive work days. The previous agreement in West New York provided acting pay at a rate of half of the difference between the Fire Officer's current rank and the higher rank. The previous agreement in Weehawken provided that the Fire Officer would receive pay for working in the higher rank after serving in that position for 30 days.

Acting pay is appropriate when a Fire Officer serves temporarily in a higher rank. I award acting pay after a fire officer temporarily serves in a temporary rank after thirty (30) consecutive calendar days of satisfactory service in that rank.

PROMOTIONS

The Regional shall attempt to maintain a New Jersey Department of Personnel list from which appointment and promotional vacancies shall be filled in accordance with New Jersey Department of Personnel Rules and Regulations.

ACTING PAY

If it is necessary to appoint a member to act or to be in charge due to a vacancy, the member serving in such temporary rank shall be paid at the rate for the rank in which he is temporarily serving, after thirty (30) consecutive calendar days of satisfactory service within that rank. Thereafter payment shall be retroactive to his first day of service in the higher capacity.

MAJOR ECONOMIC ISSUES

PROPOSALS, DISCUSSION AND FINDINGS **ON MAJOR ECONOMIC ISSUES**

In rendering this Award, I have endeavored to make a reasonable determination on all issues in dispute after giving due weight to the statutory criteria I have judged to be relevant. The evidence and argument on each of the statutory criteria referenced by the Regional and the Association to support their respective positions have been carefully considered and reviewed. All of the statutory criteria are clearly relevant to the resolution of the dispute, although in individual instances, each factor cannot be given identical weight. In addition, I have strongly considered a factor or standard not explicitly enumerated which, when applied more broadly, fits under the "interests and welfare of the public" criterion. That is, the policy interests supporting the regionalization of fire services should be furthered, with due consideration given to the work, welfare and terms and conditions of the firefighters and fire officers who perform life-saving and life-threatening duties.

Each party bears a burden of proof in support of each proposal it has advanced. In reaching my conclusions I will summarize the position taken by each party along with the rationale each has submitted. Because of the sheer volume and complexity of the issues and the evidence, I will set forth an Award

on each issue along with a concise statement of reasons in support of each determination without an extensive analysis of the statutory criteria on each major economic issue. Some of the criteria are implicitly reflected in many of the issues which require decision. For example, an issue proposed by the Association which may contain excessive costs would, if granted, cause adverse financial impact on the Regional. Another example would be an issue the Regional might propose which would have such harsh economic consequences on individual fire officers which could undermine the need for continuity and stability of employment.

Prior to deciding each issue, I note that I have given substantial consideration to the main themes advanced by the Regional and the Association which thread through almost every supporting argument and evidence on each position taken. The Association contends that the most heavy weight should be given to a retention of all provisions which historically exist in the Agreements of each municipality which pre-date regionalization. Further, the Association urges that the new terms on each issue must be set at the absolute highest level which can be found in any of the prior Agreements. By way of hypothetical example, if Town X provided 3 personal days, but others provided fewer, the new provision on personal days should begin at 3 or better for all fire officers and then increase to 4. As a corollary, the Association further asserts that no fire officer previously employed by any of the five municipalities should be subject to a reduction in the status quo which existed in any portion of the prior Agreements which may have

applied to that fire officer. The Regional disputes the Association's theory and advances another which the Association rejects. The Regional contends that the most weight must be given to the fact that it is a new public employer. As such, it asserts that, when setting new terms, it should be unencumbered by any of the terms in the prior agreements which had been negotiated by the individual municipalities. The Regional urges that each term and condition be developed anew, mostly with decreased value, and with less weight and consideration given to what one municipality or another had negotiated in the past since those municipalities are no longer the employer.

The uniqueness of this impasse requires an analysis which gives meaning to the overall construct of the economic terms rather than to focus narrowly on any single component or issue. There are also reasonable limits on what can be accomplished in an initial agreement which require modification of agreements developed over many decades under varied individualized circumstances. A status quo on any particular issue, nor any specific change made herein, does not constitute a waiver of either party's ability to propose modifications in the future.

I am persuaded that the interests and welfare of the public in having an expert, efficient and affordable regional entity, the need to have continuity and stability among those engaged in fire services, the Regional's interest in managing and administering efficient and cost effective fire services and the

employees' interests in receiving or maintaining economic benefits while working in a safe but productive environment are best served and balanced by following these broad guidelines and objectives:

1. To the extent feasible, the goal of merging or unifying major terms and conditions of employment should be attained for those employees previously employed in the five municipalities prior to regionalization. For example, certain major compensation issues should be levels of uniform even if accomplished over a period of time to ease the cost burden on the Regional.

2. To the extent that such merger or unification is not feasible, certain benefits of certain employees employed by individual municipalities should be retained even if retention of that specific benefit level cannot be enjoyed by the remainder of the workforce. One factor traditionally employed in collective bargaining is to "red circle" an individual or class of employees due, in part, to the need to avoid unfair individual impacts. For example, certain benefits have accrued over the course of one's career with a reasonable expectation of continuation until retirement. A unity of result on issues such as these may not be achievable without producing harsh inequities either in terms of benefit elimination or excessive cost.

3. Employees hired by the Regional after regionalization who were not employed by any individual municipality which helped form the Regional should

have terms and conditions of employment which give some consideration, but less weight, to the prior terms and conditions of the individual municipalities and some consideration, but more weight, to the establishment of the Regional as a new employer. The Regional, as a new employer, must be given some latitude to offer employment on terms reflective of its own character and needs. For example, a fire officer hired after regionalization has never had any employment tie to any individual municipality. Prior terms set by any individual employer should not automatically be controlling on the Regional. This consideration, however, must be balanced by the establishment of terms not so disparate in relation to the more experienced fire officers that morale and unity among all fire officers are compromised or the continuity and stability of employment among fire officers who were not hired until on or after regionalization.

4. Consideration must also be given to internal comparability between firefighters and fire officers. Each bargaining unit faces many of the same considerations and challenges. Although each has separate bargaining units, all employees, regardless of rank, must be integrated into one department charged with the same mission serving the public's health, welfare and safety. The ability to administer and manage the department will be furthered by internal comparability between these two units as well as harmony between an employee and his supervisor.

Application of these principals will result in some differentiation in terms and conditions of employment on certain individual issues from what existed in the past. Differentiation, or tiering, while commonplace in public and private sector labor relations, can be an unsettling concept. In this instance, disparate salaries, benefits and other terms and conditions of employment were inherited by the Regional and this Association upon regionalization. For employees who were employed prior to regionalization, the Regional seeks to ease differentiated terms by freezing salaries and other terms until such time that the Regional's new employees catch up to their levels over time. The Regional proposes a separate and lower salary tier for the new employees as well as new longevity schedules. The Association seeks to eliminate any and all differentiation by having all employees' salaries, benefits and terms and conditions of employment immediately rise to the highest level set by each highest term of an existing agreement and then have those terms advanced during the term of this agreement. Each theory has been given serious consideration when evaluating the economic proposals advanced by the parties and I have embraced, in part, each approach where the merits require such conclusion. However, I reject each approach in its totality because each theory, as a whole, is neither reasonable nor feasible.

An additional major consideration is the effective date of any changes to the terms and conditions of employment. Retroactivity is warranted for some, but not all terms. By law, there has been a status quo in terms and conditions of

employment pending a resolution of new terms. The legislature has allowed prior terms to be fixed subject to the negotiation of new terms but has allowed for flexibility. With respect to retroactivity, employees have enjoyed paid time off at levels previously set. Terms involving paid time off shall not be retroactive and any award modifying this type of benefit shall be prospective and shall take effect January 1, 2003. This will allow unit employees to may make plans prospectively while the Regional will be able to make staffing and administrative strategies in anticipation of change. Other issues, such as health insurance, simply cannot be resolved on a retroactive basis and must, by necessity, be prospective. Other terms such as salary require retroactive application. Salary adjustments have not been made nor received in anticipation of this award. While adjustments on such issues may not be uniform, salary increases are retroactive.

I next turn to the individual major economic issues. I conclude that effective January 1, 2003, there shall be a unification of sick leave, paid vacation and holidays.

SICK LEAVE & TERMINAL LEAVE

The **Regional** proposes the following contractual language:

Accrual

Section 7.0: Sick leave is defined as a required absence from work due to a personal illness, accident, or exposure to contagious disease. Sick leave with pay shall be accumulated as follows: Upon hire, each employee shall be entitled to a bank of 100 hours.

Commencing on January 1st of the following year, the employee will be credited with an additional 120 hours. An employee who has called in sick leave and recovers sufficient to work may be permitted to return to work after eight (8) hours. The decision to permit an employee to complete a tour of duty remains within the sole discretion of the Executive Director or his designee.

Section 7.1: Evidence in the form of a physician's certificate shall be required as proof of illness for (1) any sick leave paid for an absence of 24 hours or more; (2) on the third occasion after absences less than 24 hours. Evidence in the form of a physician's certificate may be required (1) for absences in excess of eight (8) hours; (2) whenever there is reason to believe that sick leave is being abused. Such certificate shall provide a date of treatment, diagnosis, whether the employee is able to return to modified duty, and a date the employee is expected to be released back to his normal job responsibilities. It must also be signed by a physician or surgeon who is qualified to practice within the scope of the diagnosis. Certificates signed by chiropractors will not be considered sufficient proof of injury or illness unless such chiropractor is also a licensed medical doctor.

Section 7.2: The Employer reserves the right to send, at the Regional's' expense, an employee for a physical, neurological, psychiatric, or other examination to be performed by a physician, whenever there is a request for sick leave or a request to return from sick leave.

Section 7.3: Employees on sick leave are expected to be at home except when attending a medical appointment. Whenever an employee who is out on sick leave, leaves his residence for a period exceeding two (2) hours, he is required to inform Headquarters during normal business hours or the Duty Chief, after normal business hours of such absence. Employees who are actively working at a second job are deemed well enough to perform their normal responsibilities within the Regional. Therefore sick leave benefits will be denied to those employees actively working a second job.

Section 7.4: Employees on extended medical leave shall contact the office of the Chief every Monday, between the hours of 9:00 a.m. and 12:00 noon.

Section 7.5: Employees returning to duty from medical leave shall work one (1) full tour of duty before becoming eligible for regular overtime rotation.

Conversion at Retirement

Section 7.6: Upon retirement for a pension approved by the New Jersey Pension Department, an employee shall receive payment for unused accumulated sick leave and vacation days up to a maximum of \$120 per twenty-four (24) hour day. One-half of all accumulated sick leave shall be paid at retirement. The rate of pay shall be based upon the compensation received during the time such sick leave was earned. Those employees who work less than a twenty-four hour day shall have a rate system adjusted proportionately in relation to the above.

Sick Leave Use Incentive

Section 7.7: An employee who has taken no sick days during the calendar year shall receive a stipend of \$425.00 to be paid on or before February 1st of the following year.

The **Association** proposes the following contractual language:

- A. Sick leave policy for all Fire Superiors covered by this Agreement shall continue to be administered as in the past, i.e., unlimited sick leave to a maximum of one year regardless of the nature of the illness or non-job related injury.
- B. A medical slip, stating the nature of the illness, may be required of all employees who have already used three (3) or more separate single sick leave days. A medical slip shall also be required where the absence at one period is more than two (2) days. Whenever the employer requests a sick leave medical slip the employer shall pay for the cost of same.
- C. For the purpose of terminal leave, and that purpose only, a sick leave bank shall be established in the amount of 120 hours per annum for each calendar year of employment with the Employer, which bank shall only be reduced on an hour for hour basis by reason of sick leave and during the employee's tenure with the employer for absences as a result of non-work connected injury or illness. Upon retirement within the meaning of PFRS and/or disability retirement, excluding deferred retirement, compensation in cash or time at employee's sole option shall be paid to said employee for each full day of earned and unused sick leave

time computed at one-half the average daily rate of pay received by said employee during the last year of employment.

- D. In the event an employee utilizes all of his sick leave and is still unable to return to work, then and in that event, the employee may arrange to have other employees who are members of this bargaining unit work in his place instead and he shall not suffer any loss of pay or benefits.
- E. Any employee who does not utilize any sick leave for the period between May 1 and October 31 of a calendar year shall receive \$300.00 payable on December 1. For the period November 1 through April 30, an employee who does not utilize any sick leave shall receive \$200 payable on June 1. Nothing contained in this paragraph shall be construed to permit pro-rata payment of such bonus for partial year perfect attendance.
- F. Employees of the individual fire departments with accumulated time shall have said sick time preserved for retirement use on a special list.

The Regional begins its discussion of sick leave benefits by pointing out that the amount of sick time that Fire Officers were entitled to under the predecessor agreements was 15 days per year in North Bergen, a maximum of one year in Union City, seven days in West New York, and no specific limitation in the Weehawken agreement. According to the Regional, under the previous agreements, medical documentation for sick leave was required whenever reasonable in North Bergen. The previous agreement in Union City provided that a doctor's note could be required of Fire Officers who had previously used two separate sick days or when the absence for one period was for more than one day, or when the Chief thought it reasonable. The Regional notes that the Weehawken contract provided that a Fire Officer submit a doctor's note after one

workday. Likewise, the Regional notes that the West New York agreement provided that the Fire Officer was required to submit a doctor's note upon return from an injury, or when he was out sick for more than two days. Additionally, under the West New York agreement, if a Fire Officer reported sick on two separate unrelated occasions during the year, then the Town could require a doctor's note before returning to work after any subsequent illness.

Using the Union City contract as a guide, the Regional proposes that a Fire Officer on sick leave must remain at home except when attending a medical appointment. Additionally, the Regional proposes a sick leave incentive similar to that in the North Bergen, Union City and Weehawken agreements. In North Bergen, Fire Officers who used no sick leave received \$325 each year. Those who failed to qualify for the full incentive received \$100 for each one-third (1/3) year of perfect attendance. Similarly, Union City Fire Officers not using any sick leave were entitled to a \$300 stipend per year. In Weehawken, the stipend for not using sick leave was \$300 for Fire Officers who did not use any sick leave between May 1 and October 31 of a calendar year and \$200 to Fire Officers not using sick leave between November 1 and April 30.

The Regional also cites Cpt. McGorty's testimony wherein he explained that in Weehawken, officers were entitled to unlimited sick leave of up to a year, and officers who were off duty on sick leave were required to bring a doctor's note. Addressing the Association's proposal for terminal leave, Cpt. McGorty

testified that the terminal leave provisions have been continued since the regionalization, but that the payments have come from Weehawken and not from the Regional. Similarly, the Regional cites Lt. Focht's testimony that the Union City contract provided for up to one year of sick leave and that a doctor's note was required of all Fire Officers who had previously used up to two separate single sick leave days or when the absence for one period was for more than one day, with the responsibility for the cost of the doctor's visit resting with the individual officer. Lt. Focht explained that the Union City agreement included a separate sick leave bank of five days per year. Each sick day used was taken from the bank and unused sick days would accumulate. Under that system, if an officer used more than five sick days in one year, only five sick days would be removed from the bank that year. Then, according to Lt. Focht, the accumulated sick leave days would be paid at retirement at the rate of compensation on the retirement date, but officers would receive only one hour of compensation for every two hours banked. In North Bergen, Captain Zavardino testified that Fire Officers were entitled to accumulate¹⁵ twenty-four hour days and would receive one half of the average daily rate for the last year, including longevity or differential, up to a percentage threshold of 70% for captains, 57% for deputy chiefs, 72.5% for lieutenants and 63.2% for battalion chief. The Regional notes that Captain Zavardino's testimony made clear that the Association proposes to preserve time accumulated in the prior employment relationships with the municipalities.

The Association begins its discussion of sick leave by pointing out that the first three paragraphs of its proposal are taken from the Union City agreement, paragraph D is taken from the North Bergen contract, paragraph E is taken from the Weehawken contract and paragraph F is added to protect previously accumulated and vested rights under the predecessor contracts.

Reviewing its proposal, the Association points out that it seeks to maintain the unlimited sick leave benefit for up to one year that existed in several of the prior contracts. In support of this proposal, the Association cites the Union City and Weehawken contracts, which provide the legal maximum of up to one year of sick leave, and notes that Guttenberg provided a similar benefit. Additionally, the Association point out that the North Bergen contract provides 15 work days at a rate of 24 hours each, which are cumulative. Based upon these agreements, the Association asserts that the prevalent standard in most employment situations before the regionalization was for unlimited sick leave up to a maximum of one year. In support of this proposal, the Association points to Cpt. McGorty's testimony that the unlimited sick leave program that existed in Weehawken has been maintained since regionalization.

Turning to paragraph B, the Association acknowledges that PERC ruled the language to be non-mandatory because the Commission found that the proposal prohibited the employer from seeking verification. (SN-2000-61). However, the Association emphasizes that previous agreements permitted

doctor's notes for specific numbers of sick leave occurrences. For example, the Association points out that the North Bergen agreement provides that a doctor's note may be required where there is evidence of abuse, and the Guttenberg agreement provides that medical examinations at the Town's request by the Town's doctor shall be paid for by the Town. The Association emphasizes that its proposal also includes language requiring that "whenever the employer requests a sick leave medical slip, the employer shall pay for the cost of same." The Association notes that this provision was not ruled to be non-mandatory and urges that the Award include a provision that requires that Regional bear the cost of a medical examination it requires.

The Association also urges the adoption of the sick leave incentive contained in its terminal leave benefit included in paragraph C. The Association points out that paragraph C is taken verbatim from the Union City agreement with the addition of the PFRS definition, which is included in the North Bergen agreement. The Association notes that each of the previous agreements include some form of terminal leave incentive. Citing the testimony of Cpt. McGorty, the Association notes that the terminal leave benefit provided in Weehawken of 90 work days of terminal leave has been maintained since regionalization. Additionally, the Association points to Sanzari's testimony that the West New York terminal leave program which provided for the payment of days held in the sick bank at retirement. Likewise, the Association emphasizes the sick leave bank used to accumulate terminal leave provided in the Union City agreement

and discussed in Lt. Focht's testimony. Captain Zavardino testified as to the terminal leave and sick leave non-use incentives and indicated that he had time accumulated from his years of service in North Bergen and that he continued to accumulate time and that he sought to preserve that time in the new employment relationship.

The Association emphasizes that its sick leave proposal is a combination of generally recognized benefits from the departments which now comprise the Regional and the only unique language is that in paragraph F which would preserve previous accumulated sick leave entitlements. In particular, the Association stresses that statute mandates that previously accumulated time be maintained and not forfeited and that the creation of a regional entity should not result in forfeiture of benefits for its employees. To that end, the Association cites with approval the formula used in Weehawken, where the municipality provided 23 twenty-four hour shifts upon retirement. According to the Association, an appropriate formula to compensate bargaining unit employees from Weehawken who will have earned significant credit towards retirement would be to take the 23 days of benefit at 24 hours each and divide by 25 years of service and create an annual rate. The Association calculates that the result is .92 days per year, which in turn, would be multiplied by the number of years the employee has in the system. The Association argues that this is an equity argument which would create no adverse impact and is consistent with the

statutory mandate and the pre-existing benefit provided to employees in Weehawken.

The Association points out that paragraph D provides a mechanism for an employee who has used the maximum sick leave could get additional time by virtue of other employees volunteering one of their own sick days. The Association emphasizes that Department of Personnel regulations provide for such an option to exist.

The Association cites with approval the creative non-use incentive included in the Weehawkin agreement. The Association seeks to maintain that provision in its proposed paragraph E.

The Association asserts that inclusion of paragraph F is necessary to protect vested rights. Accordingly, the Association proposes that accumulated and vested time shall be preserved for retirement use on a special list. The Association argues that this clause is consistent with the Regionalization Statute and must be provided by statutory mandate. The Association argues that employees should not be subject to forfeiture of earned and vested benefits as a result of the decision to regionalize operations.

As discussed above, the parties' proposals regarding the amount of sick leave differ dramatically, with the Regional proposing 120 hours, or five (5) 24

hour shifts per year and with the Association proposing unlimited sick time up to one year to be used as necessary. Because a separate provision in this award covers leave in the event of an on-the-job injury, the availability of unlimited sick time of up to one year is not necessary and instead, sick leave defined by hours granted annually as is the case in North Bergen and West New York is more appropriate for the Regional. I also conclude that a single unified program be implemented for all Fire Officers commencing January 1, 2003.

In this regard, I note that each aspect of sick leave programs for Fire Officers who work the 24 on, 72 off work schedule cannot directly compare to each aspect of sick leave programs for the more common work schedules worked by non-fire fighting employees and also Fire Officers who work 10/14 schedules. The Regional's proposal to provide up to a bank of 120 hours during the first year of hire and an annual allotment of a bank of 120 hours commencing January 1 of the following year to be reasonable during a Fire Officer's first five years of service. I also set the remainder of the schedule for Fire Officers based upon years of service and prior employment which allows for increased amounts beyond five years of service. After five (5) years through fifteen (15) years of service, paid sick leave shall be set at a bank of 180 hours or (7.5) 24-hour tours. After fifteen (15) years of service, Fire Officers shall receive a sick leave bank of 240 hours or ten (10) 24-hour tours. While Fire Officers are now eligible to earn 15 sick days per year pursuant to a prior labor agreement in North Bergen, I conclude that uniformity at no more than ten (10) 24-hour tours is reasonable,

attractive on a comparable basis and allows for administration of this benefit on a Regional-wide basis. I also award that portion of the Regional's proposal to permit an employee to return to work after eight hours and to grant discretion to the executive director to permit an employee to complete a tour of duty.

The parties' proposals regarding sick leave verification also differ widely. The Regional proposes that a doctor's note be required in the event that sick leave is used for an entire tour of duty, or upon the second occasion where there is an absence of less than a full tour of duty and permits the requirement of a doctor's note for any absence in excess of eight hours or where there is reason to believe that sick leave is being abused. In contrast, the Association's proposal would require a doctor's note only in the event that sick leave is used for over two tours of duty at one time or after three separate sick leave days.

Additionally, the Regional's proposal would require that a Fire Officer using sick leave must stay at home except for medical appointments and must provide the employer of notice when leaving his house for periods of greater than two hours while on sick leave. The Association voiced strenuous objection to this proposed restriction. The Association also proposes that when the Regional requests a medical slip, it will pay the cost of the doctor's visit.

Sick leave verification is a recognized tool to assist in the prevention of sick leave abuse and should be included in this agreement. However, the

Regional's need to minimize abuse of sick leave and to regulate the use of sick leave must be balanced with the rights of employees, particularly while they are off-duty between tours, and restrictions that would necessitate employees' visiting the doctor for each and every incidence of illness is unreasonable. Accordingly, sick leave verification shall be required in the event that an employee is on sick leave for more than one tour of duty and when there is reason to believe that sick leave is being abused. Only the Union City agreement required that employees remain at home except for medical appointments while on sick leave. Although the Regional has established justification for a sick leave verification policy, the Regional has not demonstrated that sick leave is abused or that there is some other need to restrict employees while on sick leave. Accordingly, the provision requiring employees to remain at home while on sick leave is not awarded. However, the Regional may require employees on extended sick leave to check in on a periodic basis as was required by the North Bergen and Weehawken agreements. Additionally, the Regional's option to send an employee for a medical exam by the Regional's physician at the Regional's expense was included in the previous agreements in North Bergen, Weehawken, and West New York and is awarded here.

Both parties propose sick leave incentive plans with differing financial incentives with the Association proposing a \$500 incentive, with \$300 provided for employees who do not use sick leave between May 1 and October 31 and \$200 provided for employees who do not use sick leave between November 1

and April 30. The Regional proposed \$425 for employees who do not use sick leave for the entire year. The dollar amount of the incentive (\$500) as proposed by the Association is reasonable and is awarded, but only for employees who do not use sick leave for the entire year.

The Regional also proposes that employees returning to duty from medical leave shall work one (1) full tour of duty before becoming eligible for regular overtime rotation. This provision was not included in any of the predecessor agreements and is not awarded here.

The Association proposes a terminal leave program similar to that provided in Union City where a sick leave bank of 120 hours per year of service was created for terminal leave purposes. Under the Union City Agreement, the sick leave bank time was used only in the event of a non-work related illness or injury and upon retirement, Union City Fire Officers received the accumulated sick leave remaining in their sick leave bank at a rate of one hour of compensation for every two hours accumulated.

The Regional proposes a more limited terminal leave benefit that would limit the value of each leave day to \$120 and would pay a benefit for half of all leave days accrued. The Regional notes that benefits such as terminal leave were adopted as part of agreements that included other trade-offs and should not be included wholesale in this agreement.

In addition to Union City, each of the previous agreements with the municipalities included terminal leave. Under the previous Weehawken agreement, upon retirement, Fire Officers received 90 days of leave with pay plus accrued vacation. This time was calculated based upon 1924 hours in a year. Prior to regionalization, West New York Fire Officers were permitted to put all unused accumulated sick and vacation leave days in a bank. There was no limit to the number of days that may be placed in the "terminal leave bank." Additionally, all firefighters hired before January 1, 1987 accumulated five days in their sick leave bank for each year of service and those days could be used only for terminal leave. Under the West New York terminal leave bank, Fire Officers receive payment for unused accumulated sick and vacation days under the following schedule up to the stated maximums:

Lieutenant	\$17,000	\$136.00 per 24 hour tour
Captain	\$18,500	\$148.00 per 24 hour tour
Battalion Chief	\$20,000	\$160.00 per 24 hour tour
Deputy Chief	\$21,800	\$174.00 per 24 hour tour

In addition, West New York Fire Officers who accumulated "book time and compensatory time" before January 1, 1987 were considered vested and the agreement provided that the "book time shall be applied and calculated under the parties' current practice."

In North Bergen, upon retirement, Fire Officers were compensated for accumulated unused sick leave at one-half the average daily rate of pay received by the employee during their last year of employment, including longevity and service differential, up to a maximum depending upon rank. Captains could receive up to 70% of the maximum captain's salary. Deputy Chiefs could receive up to a maximum of 57% of the maximum deputy chief's salary. Lieutenants could receive up to a maximum of 72.5% of the maximum Lieutenant's salary and Battalion Chiefs could receive up to a maximum of 63.215% of the maximum Battalion Chief's salary.

In addition to a terminal leave provision, the Association proposes that all leave accumulated by Fire Officers in their employment with the municipalities that compose the Regional should be maintained for retirement use on a special list.

There is merit to the Association's argument credit is due to Fire Officers who have accumulated sick or vacation leave for use as terminal leave while employed by the predecessor municipalities. Since each of the predecessor agreements included a terminal leave provision, elimination of the benefit is unwarranted. However, the Regional makes a strong argument as to the need to limit terminal leave benefits. Balancing the Fire Officer's desire to consolidate all Fire Officers in a single terminal leave program, while maintaining terminal leave benefits previously accrued while they were employed by the municipal fire

departments with the Regional's need to control future costs warrants different terms for those employees originally employed by one of the municipalities that comprise the Regional and for those employees hired directly into the Regional department.

Terminal leave is a benefit where the merger of accrued benefits under the prior agreement is simply not feasible. The benefits for those employees employed by individual municipalities should be retained, even though those specific benefit levels can not be enjoyed by the entire workforce on a uniform basis. Each of the previous agreements included different methods of accumulating time towards terminal leave and different formulas for its calculation. It is generally accepted that leave time accrued by employees towards terminal leave is vested and should not be diminished.

Accordingly, a "red circling" or maintenance of each of the previous terminal leave benefits provided to Fire Officers who were employed by one of the municipalities that make up the Regional Department is appropriate and is awarded.

Fire officers who are hired originally by the Regional have no such history and have no vested interest in a particular terminal leave benefit previously provided. Accordingly, the establishment of a new terminal leave benefit for those employees is appropriate. The Union's proposal, which is modeled after

the Union City agreement would provide a sick leave bank of 120 hours per year of service is created for terminal leave purposes. However, that sick leave bank is premised upon the availability of sick leave of up to one year rather than the sick leave provisions included in this agreement. The Association's proposal would also compensate Fire Officers for the accumulated sick leave remaining in their sick leave bank at a rate of one hour of compensation for every two hours accumulated in addition to 120 hours per years of service.

The Regional's proposal would limit compensation for accrued leave to \$120 per 24 hour tour and would provide compensation for half of all accrued sick and vacation leave. In other words, the Regional's proposal would compensate Fire Officers for accrued sick and vacation leave at a rate of \$60 per accrued 24-hour tour of duty while the Association's proposal would compensate accrued time at half of the hourly rate at retirement, up to one year's salary. The Regional's proposal is significantly less than comparable terminal leave policies throughout Hudson County, while the Association's proposal exceeds most of the terminal leave benefits previously enjoyed by Fire Officers in the municipalities that compose the Regional.

Accordingly, the terminal leave benefit for those employees hired by the Regional after regionalization shall provide that employees shall be compensated for each day of sick or vacation leave accrued at the rate of \$120 per 24-hour tour, as proposed by the Regional and as previously provided in West New York.

However, Fire Officers shall be compensated for all leave days rather than for one-half subject to a cap which previously existed in West New York. Terminal leave shall be subject to a maximum of \$15,000, similar to what the agreement currently provides in West New York. The \$120 per tour provided to Fire Officers provides reasonable compensation for unused sick and vacation leave time while also providing a cap of \$15,000 which provides the Regional with a limit on future terminal leave costs as well as the ability to plan for those costs.

All unused accumulated sick and vacation leave days shall be put into a bank to be used as Terminal Leave. There shall be no set limit to the number of days which an employee can accumulate in his Terminal Leave bank but he shall only be paid for the purpose of terminal leave in accordance with the caps and rate system established in this Article.

For all employees originally employed by the municipalities of Guttenberg, North Bergen, Weehawken, West New York, or Union City, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall receive payment for eligible days as provided in the municipalities' collective bargaining agreements which employed that employee at the time of Regionalization. Terminal leave benefits for such employees shall be based upon leave accumulated with the Regional as well as with any predecessor department.

For all employees employed by the Regional after regionalization, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall 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. Those employees who work less than a twenty-four hour day shall have a rate system adjusted proportionately in relation to the above.

As concluded above, the parties' sick leave and terminal leave provisions shall be as follows:

Effective January 1, 2003, sick leave may be utilized by employees when they are unable to perform their work by reason of personal illness, accident, or exposure to contagious disease. Sick leave with pay shall be accumulated as follows: Upon hire, each employee shall be entitled to a bank of 120 hours. Commencing on January 1st of the following year, the employee will be credited with an annual allotment of 120 hours during a Fire Officer's first five years of service. After five (5) years through fifteen (15) years of service, paid sick leave shall be set at a bank of 180 hours or (7.5) 24-hour tours. After fifteen (15) years of service, fire officers shall receive a sick leave bank of 240 hours. An employee who has called in sick leave and recovers sufficient to work may be permitted to return to work after eight (8) hours. The decision to permit an employee to complete a tour of duty remains within the sole discretion of the Executive Director.

Evidence in the form of a physician's certificate shall be required as proof of illness for any sick leave paid for an absence of more than one tour of duty. Evidence in the form of a physician's certificate may be required whenever there is reason to believe that sick leave is being abused. Such certificate shall provide a date of treatment, diagnosis, and if appropriate, whether the employee is able to return to modified duty, and a date the employee is expected to be released back to his normal job responsibilities.

The Employer reserves the right to send an employee, at the Regional's expense, for a physical, neurological, psychiatric, or other examination to be performed by a physician, whenever there is a request for sick leave or a request to return from sick leave.

Employees on extended medical leave shall contact the office of the Chief on a weekly basis.

Sick Leave Use Incentive

Effective January 1, 2003, an employee who has taken no sick days during the calendar year shall receive a stipend of \$500.00 to be paid on or before February 1st of the following year.

During protracted periods of illness or disability of an employee, the Department head may require interim reports on the condition of the patient, from the attending physician and/or a Department medical physician. When under medical care, employees are expected to conform to the instructions of the attending physician if

they wish to qualify for salary payment during such period of illness or disability.

If the employee is absent from work for reasons that entitle him to sick leave, the Department head or his designee representative shall be notified as early as possible prior to the commencement of his or her tour of duty.

Terminal Leave

All unused accumulated sick and vacation leave days shall be put into a bank to be used as Terminal Leave. There shall be no set limit to the number of days which an employee can accumulate in his Terminal Leave bank but he shall only be paid for the purpose of terminal leave in accordance with the caps and rate system established in this Article.

For all employees originally employed by the municipalities of Guttenberg, North Bergen, Weehawken, West New York, or Union City, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall receive payment for eligible days as provided in the municipalities' collective bargaining agreements which employed that employee at the time of Regionalization. Terminal leave benefits for such employees shall be based upon leave accumulated with the Regional as well as with any predecessor department.

For all employees employed by the Regional after regionalization, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall 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. Those employees who work less than a twenty-four hour day shall have a rate system adjusted proportionately in relation to the above.

VACATION

The **Regional** proposes the following contractual language:

Accrual Rate

Section 7.8: Annual leave shall accrue as follows:

From the date of hire until December 31st of the first calendar year worked: Upon completion of four (4) months service, and for each succeeding four (4) month period up to the end of the calendar year, an employee scheduled on a 24 hour tour shall be entitled to one day paid vacation. Alternatively, employees scheduled on an 8 hour tour will become entitled to take three (3) days of paid vacation upon completion of four (4) months service and for each succeeding four (4) month period up to the end of the calendar year. Thereafter, the following schedule shall be followed:

<u>Years of Service</u>	<u>Employees on 24 hour tours</u>	<u>Employees on 8 hour tours</u>
1 to 5 years	four (4) days	twelve (12) days
6 to 10 years	five (5) days	fifteen (15) days
11 to 15	six (6) days	eighteen (18) days
16 to 20	eight (8) days	twenty-four (24) days
21 and above	nine (9) days	twenty-seven (27) days

In the calendar year in which an employee retires, such employee shall be entitled to a prorated amount of paid vacation time.

Section 7.9: It is the responsibility of each employee to timely submit and properly schedule his vacation according to the procedures issued by the Regional. Failure to do so may result in the forfeiture of such vacation. All vacation shall be used prior to the end of the calendar year unless otherwise approved in writing by the Executive Director or his designee.

Usage

Section 7.10: An employee's vacation shall be scheduled and approved by the Executive Director or his designee by December 31st of the prior year. Vacation may be taken anytime between January 2 and December 30 with the exception of Christmas Day. Annual leave may be used for vacation, absence for the transaction of personal business, for non-covered portion of sick leave when such leave has been exhausted through illness, and for any absence from work not covered by another type of leave provision. An employee may arrange to exchange scheduled vacation dates with other members provided they follow the requirements listed under Section 6.2 of this Agreement.

Vacation Scheduling

Section 7.11: It is the purpose of this Agreement to prevent the depletion of manpower below critical limits. Regular vacations shall be granted in accordance with the following schedule:

All vacations shall be drawn by lot. There shall be three (3) drawings for the order of choice. There shall be three (3) vacation periods and a drawing for each period. Selection of available vacations will be based first by company, then by battalion. All periods shall limit the number of Fire Officers going on vacation to the quotient of the number of Fire Officers divided by:

three (3) in period #1 (Spring)
three (3) in period #2 (Summer)
three (3) in period #3 (Fall)

The assignment of vacations shall be arranged by the Executive Director or his designee, for such time or times as in his opinion best services the needs of the Regional, preference being given to rank.

Cancellation of Vacation

Section 7.12: An employee who is off work because of sickness or injury and is under a doctor's care, if his vacation was scheduled to begin before he is able to return to work, may have his vacation rescheduled for a later date. This request must be in writing and turned in to the Department Head prior to the vacation period starting. Approval rests with the Chief or his designee. Vacation will be reassigned during that calendar year unless specifically approved otherwise by the Executive Director or his designee.

The **Association** proposes the following contractual language:

- A. Employees covered by this Bargaining unit shall be entitled to vacation time in accordance with the following schedule:

Deputy Chief:

Thirty-three (33) twelve (12) hour blocks

Battalion Chiefs:

Thirty-one (31) twelve (12) hour blocks

Captain & Lieutenants:

Twenty-nine (29) twelve (12) hour blocks

In the event an employee works less than a full year, he shall receive a pro rata portion of the aforementioned vacation time.

- B. In the case of death of a member all vacation due him shall be paid to his estate.
- C. The Department shall set a vacation schedule for line companies and staff, after consultation with the Association president. However, at no time shall more than nine (9) supervisors be allowed off in the same vacation period for the purpose of vacation.
- D. Unused vacation time shall be vested and banked for future use.
- E. When in any calendar year the vacation or any part thereof is not granted by reason of pressure of Fire Department activity, such vacation periods not granted shall accumulate and shall be granted during the next succeeding year.
- F. Effective every January of each year of this Agreement and not later than the vacation submittal date of each calendar year, each employee shall be entitled to place up to seventy-two (72) hours of vacation leave "in reserve". All requests must be made in writing. Said time shall be utilized by employees in a minimum of six (6) hour segments or multiples thereof, prior to the end of the calendar year. It is strictly the responsibility of the employee to schedule reserve vacation day and requests should be made as early as possible. An employee's request shall not be unreasonably denied.
- G. Employees covered by this Agreement who were previously employed by Town of West New York Fire Department shall be entitled to previously banked compensatory time (pursuant to Art. VIII, Section 1(a) of said contract). It is specifically proposed that all banked and accumulated time which existed as of the time of the regionalization will be preserved and credits will be maintained for each individual employee.

Citing the testimony of Cpt. McGorty, the Regional asserts that the Association seeks 60% increase in vacation time for Weehawken Fire Officers because that is the highest level provided to Fire Officers by any of the predecessor municipalities. The Regional also cites Cpt. McGorty's testimony that Weehawken Captains receive nine (9) days, which includes one (1) comp day. Noting Cpt. McGorty's testimony that the comp day was an effort to increase the time off for Weehawken Fire Officers because they received less time than other departments, the Regional calculates that if Weehawken vacation time is converted into twelve (12) hour blocks, the Association's proposal would increase the amount Weehawken Fire Officers receive by eleven (11) twelve (12) hour blocks, or by five and one-half (5 ½) extra 24-hour tours. The Regional emphasizes Cpt. McGorty's acknowledgement that if the Association's proposal was granted, Fire Officers would only work about seventy-four (74) days, less other leave time and that previous efforts by Weehawken Fire Officers to get more time off were generally unsuccessful.

The Regional points out that under the previous agreements, North Bergen Captains and Lieutenants received twenty-four (24) 12-hour tours per year and North Bergen Battalion Chiefs received twenty-six (26) 12-hour tours per year. The Regional cites Captain Zavardino's testimony that North Bergen Fire Officers were not permitted to bank unused vacation time during the last eight years, and that when North Bergen had 18 to 21 members on a shift, only a total of five (5) Fire Officers and firefighters could be off for vacation per shift.

The Regional emphasizes the comparison between the number of Fire Officers permitted to use vacation per shift in North Bergen with Association's proposal to have up to nine (9) Fire Officers off for vacation per shift. In this context, the Regional also stressed that even with that contract language, a formula was used in North Bergen that in reality permitted up to three (3) officers to be off on vacation per shift.

In Union City, Lieutenants received nine (9) 24-hour tours per year, Captains received ten (10) 24-hour tours per year, Battalion Chiefs received ten (10) 24-hour tours per year and Deputy Chiefs received eleven (11) 24-hour tours per year. Lt. Focht testified that Union City Fire Officers were assigned vacation days by the Deputy Chief for three periods, spring, summer and fall without regard to preference or seniority. The Regional notes that out of the approximately 25 Firefighters and Fire Officers assigned per shift per tour, a combined total of only four (4) firefighters and Fire Officers could be off on vacation per shift in Union City. Additionally, the Regional notes that Fire Officers were required to take their vacation days in twenty-four hour blocks, unless they decided to banked their time. According to the Regional, Union City Fire Officers were permitted to bank up to two (2) years of vacation time.

In West New York, the Regional points out, Captains and Lieutenants received twelve (12) 24-hour tours per year and West New York Deputy Chiefs and Battalion Chiefs received thirteen (13) 24-hour tours per year. Pointing to

Sanzari's testimony that he received fifteen (15) vacation days annually as a West New York Fire Officer, the Regional points out that if he used all fifteen (15) vacation days, he would be scheduled to work only seventy-six (76) days per year, less any other days that he might take off. The Regional also points to Sanzari's testimony that he worked approximately 70 days in 1999.

In comparison, the Regional points out that Atlantic City Fire Officers receive twelve (12) vacation days during years one through three, sixteen (16) vacation days during year four, twenty (20) vacation days during year five and twenty-four (24) vacations days in years six through retirement. The Regional compares the vacation benefits it proposes to the twenty (20) 24-hour shifts per year received by Harrison Captains and the twenty-four (24) 24-hour shifts received by the Harrison Deputy Chiefs. Similarly, the Regional compares the vacation benefits it proposes those in Hillside, which include four (4) 24-hour shifts upon commencement of the second (2nd) year through third (3rd) year, six (6) twenty-four (24) hour tours upon commencement of fourth (4th) year through fifth (5th) year, eight (8) twenty-four (24) tours upon commencement of sixth (6th) year through tenth (10th) year, nine (9) twenty-four (24) tours upon commencement of eleventh (11th) year through fifteenth (15th) year, and eleven (11) twenty-four (24) tours upon commencement of sixteenth (16th) year. The Regional also uses Hoboken for comparison, noting that Hoboken Lieutenants and Captains receive thirteen (13) twenty-four (24) hour tours during years one (1) through five (5); fifteen (15) twenty-four (24) hour tours during years six (6)

through ten (10); seventeen (17) twenty-four (24) hour tours during years eleven (11) through fifteen (15), and nineteen (19) twenty-four (24) hour tours during years sixteen (16) and beyond. According to the Regional, Hoboken Battalion Chiefs and Deputy Chiefs receive fourteen (14) twenty-four (24) hour tours during years one (1) through five (5); sixteen (16) twenty-four (24) hour tours during years six (6) through ten (10); eighteen (18) twenty-four (24) hour tours during years eleven (11) through fifteen (15); and twenty (20) twenty-four (24) hour tours during years sixteen (16) and beyond. Within New Jersey, the Regional also looks to Newark for comparison, where Captains receive twenty-two (22) vacation tours per annum and Battalion Chiefs receive twenty-three (23) vacation tours per annum.

Looking at Fire Officer vacation benefits nationwide, the Regional notes that New York City Fire Officers with less than three (3) years of service receive twenty (20) tours, and those with more than three (3) years of service receive twenty six (26) tours. According to the Regional, San Diego Fire Officers receive a total of 350 hours to be used for sick leave and annual leave.

Addressing Paragraph C of the Association's proposal, the Regional cites Cpt. McGorty's testimony that nine Fire Officers would be permitted off in the same vacation period for the purpose of vacation, as compared to only five in North Bergen and Union City. The Regional emphasizes Cpt. McGorty's

testimony, there with twenty-three officers in his bargaining unit, permitting up to nine officers on vacation at any one period could result in overtime.

The Regional also points to a chart of firefighters' use of vacation and sick leave. According to the Regional that chart demonstrates that from November 1, 1999 through October 31, 2000, a significant number of firefighters used their sick and/or vacation days on Fridays, Saturdays, Sundays, and Mondays (E-31).

According to the Association, its proposed vacation language is taken from existing contract provisions based upon pre-existing agreements. The Association asserts that Paragraphs A, B, C and D are found in the North Bergen contract, while Paragraph E of the proposal appears in the prior Weehawken contract as paragraph D in Article XIII, and Paragraph F appears in the prior West New York agreement. The Association highlights Paragraph G, which it has added to protect vested benefits which were earned and banked by those employees previously employed by West New York. Previously banked time was protected and guaranteed under the West New York agreement. The Association highlights the importance of the fact that the benefits at issue were previously earned and banked. The Association emphasizes that this paragraph is important only to protect former West New York Fire Officers from forfeiture of their previously earned vacation benefits. According to the Association, the Reorganization statute prohibits forfeiture and the record does not support it.

Citing Cpt. McGorty's testimony supporting the proposal to unify vacation entitlement at the North Bergen level, the Association acknowledges that some Fire Officers would earn more vacation under this proposal, but several portions of the proposal are similar to benefits previously enjoyed under other predecessor agreements. For example, the Association cites the benefit received by Weehawken Fire Officers that vacation not used due to the employer's work requirements is carried to the following year and banked for future use.

In considering the amount of annual vacation days proposed the Association notes that for West New York Fire Officers, the vacation entitlement is less than is currently enjoyed by other North Hudson municipalities. Specifically, the current schedule of entitlement provides up to thirteen (13) working days, and in addition three (3) compensatory days. A Deputy Chief would therefore receive thirteen (13) 24-hour work days of vacation plus three "comp days" for a total of sixteen (16) 24-hour days off. The Association proposes a maximum benefit of thirty-three (33) 12-hour blocks. This is only one day difference from what is currently enjoyed by the employees. The Association points out that under the previous agreement, a Captain in West New York receives twelve (12) 24-hour work days as vacation plus three work days as "comp days" as provided under the vacation article. These 15 days equal thirty (30) 12-hour blocks. The Association points out that under its proposal, a Captain would receive twenty-nine (29) 12-hour blocks, or one less day off for

persons previously categorized as Captains and Lieutenants. The Association cites Sanzari's testimony that the Association's proposal is for less vacation time because it does not include the three compensatory days. The Association emphasizes that comp days are an integral part of a vacation article in the prior West New York contract, pointing out that the first line of the West New York vacation article indicates that the three comp days must be read together with the vacation entitlement. Pointing out the importance of the comp bank time issue in West New York, the Association again emphasizes Sanzari's testimony that he presently banks three comp days each year, which are vested as of the first day of each calendar year. The Association points out that Sanzari testified that employees who left Regional, but were previously employed in West New York have received the full compensatory time benefit. Based upon Sanzari's testimony, the Association urges that the longstanding West New York policy of banking compensatory time, provided specifically under the vacation article must be maintained. The Association asserts that it is earned vested time which was part of a pre-existing contractual relationship in West New York and it can not be abandoned. Additionally, the Association notes that the issue of preserved time in West New York was the subject of an October 17, 2000 settlement between the parties that protected vested time.

The Association points out that the same concept of vesting unused vacation time for future use, or in the event of death, to be payable to the estate, was also part of the Union City vacation benefit program. The Association points

to Lt. Focht's testimony that before regionalization, unused vacation time was vested for future use and in Union City employees could bank up to 2 years of vacation time. The Association points out that the long standing policy at the Weehawken Fire Department was to also permit a banking of up to two (2) years of vacation time.

According to the Association, its proposal is as close to an equalization of the various vacation articles as is possible. Acknowledging that some employees will realize an increase in vacation days, the Association points out the gain will be offset by the singular categorization of personal days without the addition of the 3 comp days as were previously in existence in the West New York contract. Additionally, the Association points out that by calculating blocks in 12-hour units, the benefit is equalized among the various towns. In some cases, the Association notes, some bargaining unit employees actually come out with fewer vacation days per year under its proposal. The Association asserts that it has attempted to draft a proposal that reasonably converges the various benefits that contains the essential non-economic impact language together with a reasonably unified benefit for all to enjoy. The Association notes that a key concept in all of these economic impact items of course is to have all bargaining unit persons who are working receive the same benefit.

Looking first to the goal of unifying the amount of vacation leave to be provided to the Regional's Fire Officers, unification should occur, to the extent

possible, in a manner consistent with the previous agreements as well as what comparability suggests for the amount of vacation leave provided to Fire Officers throughout Hudson County and New Jersey.

The vacation benefits provided to Fire Officers previously employed by the municipalities that comprised the Regional varied widely depending upon both years of service and dates of hire. In Weehawken, Captains earn 8 working tours of vacation per year and Battalion Chiefs earn 9 working tours of vacation per year.

In West New York, Captains and Lieutenants received 12 vacation days and Deputy Chiefs and Battalion Chiefs received 13 vacation days. In West New York, all Fire Officers also receive three compensatory days. In Union City, Fire Officers received the following vacation benefits:

Lieutenant	9	24-hour tours
Captain	10	24-hour tours
Battalion Chief	10	24-hour tours
Deputy Chief	11	24-hour tours

In North Bergen, Fire Officers hired on or before November 1, 1986 received the following vacation benefits:

Deputy Chiefs	28 twelve hour tours
Battalion Chiefs	26 twelve hour tours
Captains/Lieutenants	24 twelve hour tours

North Bergen Fire Officers hired after November 1, 1986 received the following vacation benefits:

0-1 year of service	12 12 hours prorated
end of 1 to end of two years of service	12 12 hours
end of 2 to end of three years of service	14 12 hours
end of 3 to end of four years of service	16 12 hours
end of 4 to end of five years of service	18 12 hours
end of 5 years of service	20 12 hours

Similarly, Fire Officers in other Hudson County municipalities receive vacation benefits that vary based upon their date of hire and their years of service. For example, Hoboken Lieutenants and Captains receive thirteen (13) 24-hour tours during years one through five; fifteen (15) 24-hour tours during years six through ten; seventeen (17) 24-hour tours during years 11 through 15, and nineteen (19) 24-hour tours during years 16 and beyond. Hoboken Battalion Chiefs and Deputy Chiefs receive fourteen (14) 24-hour tours during years one through five, sixteen (16) 24-hour tours during years six through ten, eighteen (18) 24-hour tours during years eleven through fifteen; and twenty (20) 24-hour tours during years 16 and beyond.

I now turn to Fire Officers' vacation benefits in other municipalities throughout the State, although the number of days must be considered in light of the number of hours which constitute a day in each municipality. Atlantic City Fire Officers receive twelve (12) vacation days, on a 10/14 schedule, during years one through three, sixteen (16) vacation days during year four, twenty (20) vacation days during year five and twenty-four (24) vacations days in years six

through retirement. Harrison Captains receive twenty (20) 24-hour shifts per year. Harrison Deputy Chiefs receive twenty-four (24) 24-hour shifts. Hillside Fire Officers receive four (4) 24-hour shifts upon commencement of the second year through the third year, six (6) 24-hour tours upon commencement of fourth year through fifth year, eight (8) 24-hour tours upon commencement of sixth year through tenth year, nine (9) 24-hour tours upon commencement of the eleventh year through the fifteenth year, and eleven (11) 24-hour tours upon commencement of the sixteenth year. In Newark where Fire Officers work on a 10/14 schedule, Captains receive twenty-two (22) vacation tours per annum and Battalion Chiefs receive twenty-three (23) vacation tours per annum.

Turning first to the amount of vacation to be provided to Fire Officers, as stated earlier, the parties' proposals must be examined in light of the benefits provided in the municipalities that comprise the Regional with an eye towards unifying those benefits to the extent feasible. The Regional proposes that vacation for Fire Officers be accrued according to the following schedule:

<u>Years of Service</u>	<u>Employees on 24 hour tours</u>	<u>Employees on 8 hour tours</u>
1 to 5 years	four (4) days	twelve (12) days
6 to 10 years	five (5) days	fifteen (15) days
11 to 15	six (6) days	eighteen (18) days
16 to 20	eight (8) days	twenty-four (24) days
21 and above	nine (9) days	twenty-seven (27) days

The Association proposes that Deputy Chiefs receive thirty-three (33) 12-hour blocks of vacation, Battalion Chiefs receive thirty-one (31) 12-hour blocks of

vacation, and Captains and Lieutenants receive twenty-nine (29) 12-hour blocks of vacation. In comparison, under the predecessor agreements with the municipalities, Fire Officers generally received more generous vacation benefits than are proposed by the Regional but fewer vacation days than are now proposed by the Association. Specifically, In West New York, Captains and Lieutenants received twelve (12) vacation days and Deputy Chiefs and Battalion Chiefs received thirteen (13) vacation days. In West New York, all Fire Officers also receive three compensatory days. In Union City, Fire Officers received the following vacation benefits:

Lieutenant	9	24-hour tours
Captain	10	24-hour tours
Battalion Chief	10	24-hour tours
Deputy Chief	11	24-hour tours

In North Bergen, Fire Officers hired on or before November 1, 1986 received the following vacation benefits:

Captain/Lieutenant	24	twelve hour tours
Battalion Chief	26	twelve hour tours
Deputy Chief	28	twelve hour tours

North Bergen Fire Officers hired after November 1, 1986 received the following vacation benefits:

0-1 year of service	12	12 hours prorated
end of 1 to end of two years of service	12	12 hours
end of 2 to end of three years of service	14	12 hours
end of 3 to end of four years of service	16	12 hours
end of 4 to end of five years of service	18	12 hours
end of 5 years of service	20	12 hours

In consideration of all of the above, I set the following vacation schedule. Effective January 1, 2003, for Fire Officers working a 24 hour tour, paid vacation leave shall be as follows:

24 Hour Tours of Duty	
FO3	12
FO2	12
FO1	11

I have set the number of vacation days for Captains and Lieutenants at eleven (11) 24-hour tours and for Battalion Chiefs and Deputy Chiefs at twelve (12) 24-hour tours in consideration of the vacation benefit levels previously received by Fire Officers, including compensatory days previously provided in lieu of additional vacation days.

For Fire Officers who work eight hour days, the following schedule of paid vacation leave is reasonable although not strictly proportional with those in every respect who work 24 hour tours of duty:

8 Hour Tours of Duty	
FO3	32
FO2	32
FO1	30

The Regional proposes that for vacation scheduling purposes, the year should be divided into three seasonal periods and the number of Fire Officers permitted to use vacation during each period be limited one third of the total number of Fire Officers. The Regional proposes further that vacations be drawn by lot for each period and selection be based first by company, then by battalion. In contrast, the Association proposes that the Department shall set the schedule after consultation with the Association and up to nine Fire Officers should be permitted to use vacation at the same time. Only Weehawken, which included Fire Officers in a bargaining unit with firefighters placed seasonal limitations on vacation time. The Weehawken agreement also provided vacation preference during the summer months to Fire Officers. I decline to place seasonal limitations on vacation use for Fire Officers at this time.

The previous agreements did not provide specific vacation distribution programs for Fire Officers. The parties have had limited experience with vacation scheduling at the Regional to date. I have set a Regional-wide program for paid vacation. After this program has been implemented, the parties may wish to return to this issue for the next round of negotiations and agree upon a more specific program for vacation use and distribution. The Association's proposal is awarded to the extent that it provides that the Department shall set the vacation schedule after consultation with the Association president.

The Association proposes that each year Fire Officers should be permitted to reserve 72 hours of vacation that may be used in six hour blocks or multiples thereof. In contrast the Regional argues that vacation should be used only in blocks of 24 hours. I deny the Association's proposal for reserve vacation time but conclude that vacation leave may be taken in 12 as well as 24 hour blocks except during the summer months when vacation leave shall be taken in blocks of 24 hours. The taking of a 12 hour block for vacation is contingent upon the remaining 12 hours of that Fire Officer's tour of duty not incurring overtime.

Other vacation procedures at issue include those covering the cancellation of vacation time, accumulation and banking of vacation time, and the preservation of banked or accumulated vacation time for Fire Officers previously employed by West New York.

The Regional proposes that in the event that an employee is on sick leave during his scheduled vacation, the vacation may be rescheduled before the end of the calendar year. The Association does not object to that proposal. In the interest of consistency between the Fire Officers and firefighters, the provision awarded in the firefighters' agreement covering the overlap of sick leave and vacation time is included in this award as well:

In the event an employee's sick leave and vacation time coincide, he shall be charged with sick leave only, and may take his accrued vacation time subsequently. In the event that an employee is on vacation and becomes ill, the scheduled vacation leave may not be

converted to sick leave and the employee will be charged for vacation time rather than sick time for the remainder of the scheduled vacation leave.

The Association proposes that unused vacation time may be banked without limit. The previous agreement in Union City permitted the banking of up to two years of vacation time. The previous agreements in Weehawken and West New York provided that Fire Officers could not accumulate vacation unless a vacation request was not granted due to Department activity. The Regional's proposal that vacation may not be banked or carried from year to year is based upon the previous North Bergen agreement which does not permit banking of vacation time except in the context of a terminal leave bank. I do not award the Union's proposal as advanced but there is merit in the inclusion of some aspects of the prior agreements on this issue. I award the following:

Vacation time earned may not be accumulated unless an employee was prevented by the Regional from taking scheduled vacation time due to departmental needs or disability. In either event, the employee may bank such vacation time for no more than one year. This provision shall not prevent the banking of vacation time for the purposes of placing such time in the terminal leave bank.

The West New York agreement provided that if a firefighter could not use his full vacation entitlement by the end of the calendar year, due either to disability or departmental procedure, he would be compensated either in cash or in compensatory time and that the compensatory time could be banked. The Association has proposed that Fire Officers who were previously employed by West New York be entitled to previously banked and accumulated time which

existed as of the time of the regionalization. The vacation or compensatory time accumulated by West New York Fire Officers is a benefit that they are entitled to maintain. On this issue the agreement shall provide:

Employees covered by this Agreement who were previously employed by Town of West New York Fire Department shall be entitled to maintain all previously banked compensatory and accumulated time which existed as of the time of the regionalization

In addition to the above, I also award the following miscellaneous proposals.

1. In the case of the death of a member, all vacation due him or her shall be paid to his/her estate.
2. Any Fire Officer who gets involuntarily transferred shall have the option to keep his previously approved vacation or to use any open vacation slot in the new-transferred position. If the Fire Officer chooses to keep his previously approved vacation period, it cannot be denied even if it creates an overtime situation.

As discussed above, the parties' vacation provisions, shall be as follows:

Effective January 1, 2003, for Fire Officers working a 24 hour tour, paid vacation leave shall be as follows:

24 Hour Tours of Duty	
FO3	12
FO2	12
FO1	11

Effective January 1, 2003, for Fire Officers working an 8 hour tour, paid vacation leave shall be as follows:

8 Hour Tours of Duty	
FO3	32
FO2	32
FO1	30

The Department shall set a vacation schedule for line companies and staff, after consultation with the Association president. Vacation leave may be taken in 12 as well as 24 hour blocks.

In the case of the death of a member, all vacation due him or her shall be paid to his/her estate.

In the event an employee's sick leave and vacation time coincide, he shall be charged with sick leave only, and may take his accrued vacation time subsequently. In the event that an employee is on vacation and becomes ill, the scheduled vacation leave may not be converted to sick leave and the employee will be charged for vacation time rather than sick time for the remainder of the scheduled vacation leave.

Vacation time earned may not be accumulated unless an employee was prevented by the Regional from taking scheduled vacation time due to departmental needs or disability. In either event, the employee may bank such vacation time for no more than one year. This provision shall not prevent the banking of vacation time for the purposes of placing such time in the terminal leave bank.

Employees covered by this Agreement who were previously employed by Town of West New York Fire Department shall be entitled to maintain all previously banked compensatory and accumulated time which existed as of the time of the regionalization

Any Fire Officer who gets involuntarily transferred shall have the option to keep his previously approved vacation or to use any open vacation slot in the new-transferred position. If the Fire Officer chooses to keep his previously approved vacation period, it cannot be denied even if it creates an overtime situation.

HOLIDAYS

The **Regional** proposes the following contractual language:

Section 7.13: The following holidays are those which shall be recognized and observed:

New Year's Day
President's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving
Day after Thanksgiving
Christmas

Section 7.14: All employees who are scheduled to work (not including those employees scheduled on overtime) and on duty on the holiday shall be compensated in addition to their normal rate, an additional eight hours pay at straight time.

The **Association** proposes the following contractual language:

- A. All employees covered by this Agreement shall be entitled to and will receive fifteen (15) paid holidays (total of 120 hours). Calculation of the hourly rate for holiday premiums shall use a division of 1664. (Base educational incentive & longevity).
- B. The holiday benefit shall be paid in equal installments and folded in to each employee's regular pay. This folded in amount shall be used for all calculation purposes.
- C. A two (2) hour mealtime period shall be given to those Line Organization members who are on duty on the following holidays except in case of emergency:

New Year's Day
Easter Sunday
Thanksgiving Day
Christmas Day

The mealtime period shall exist from 7:00 AM to 7:00 PM.

The Regional points out that under the previous municipal contracts, West New York Fire Officers received fourteen (14) holidays per year; Union City Fire Officers received fifteen (15) holidays per year; North Bergen Fire Officers received five (5) compensatory twelve (12) hour tours annually and Weehawken Fire Officers received thirteen (13) paid holidays (a total of 104 hours).

The Regional points out that across the State of New Jersey, Atlantic City Fire Officers receive fourteen (14) holidays, Harrison Fire Officers receive thirteen (13) holidays, Hillside Fire Officers receive 118 hours of holiday pay in lieu of granting certain legal holidays, and Hoboken Fire Officers receive fourteen (14) paid holidays at \$120 per holiday. Looking nationally, the Regional notes that New York City Fire Officers do not receive holiday pay; Phoenix Fire Officers receive eleven (11) holidays, and San Diego Fire Officers receive ten (10) holidays per year.

The Regional emphasizes that full-time employees in medium and large private establishments averaged 9.3 paid holidays; professional and technical employees averaged 9.6 paid holidays; clerical employees averaged 8.8 paid holidays; and blue-collar and service employees averaged 9.4 paid holidays.

The Regional explains that its proposal would pay Fire Officers only if they worked on a particular holiday because it is more equitable for the individual

working a holiday than it is for the individual working a holiday and not working a holiday and getting the same amount of money. The Regional points out that its proposal also would counteract circumstances which tend to cause it to incur significant overtime costs. Moreover, the Regional notes that its proposal creates a financial incentive for the Fire Officer to come to work on a scheduled holiday because the particular Fire Officer would get paid for an additional eight (8) hours.

In contrast, the Regional points out that the Association's proposal would pay Fire Officers for fifteen (15) holidays even though they are not working on those particular days and would place fifteen (15) 8-hour days into the Fire Officers' base salary. Accordingly, the Regional notes that the Association's proposal would increase the hourly rate for a Fire Officer, and would result in an increased cost to the Regional. Additionally, the Regional argues that the proposed fifteen (15) holidays clearly exceed the number of holidays Fire Officers received while working for the five (5) individual municipalities prior to the merger.

The Association begins by noting that each of the previously existing fire departments included holiday benefits in their contracts. The Association asserts that its proposal in this proceeding a composite of those provisions. Specifically, the Association points out that the format for paragraph A is from the Weehawken fire contract, where the divisor of 1,664 hours is specifically set

forth. Citing the expanded rate formula in the Union City agreement, the Association asserts that the various departments have all included in the “expanded hourly rate” other regularly paid benefits such as longevity and educational incentive.

Here, the Association explains that its proposal calls for 15 paid holidays or, a total of 120 hours. According to the Association, the pre-existing contracts each provided for a number of annual holidays with slight variation. The Association points out that this proposal is modeled upon the Union City contract, which provided for fifteen (15) annual holidays. The Association notes that fourteen (14) holidays were available in West New York, Guttenberg and Weehawken. The Association explains that the North Bergen contract seems to provided fewer holidays, although, the delineation between holidays, vacation days and comp days is not clear. The Association maintains that the benefit in North Bergen, when all time off is taken into account, is similar to in the other municipalities. The Association maintains that the use of 15 days in the Union City contract is consistent with its position in the setting of its last offer because fewer days would result in a forfeiture of some holiday time for those employees who previously worked in the Union City Fire Department. The Association argues that holidays are another situation where a merging into the 15 day standard may be considered its goal in the Arbitration Award.

Turning to paragraph B of the proposal, which covers folding in of the holiday value, the Association points out that the Union City and North Bergen contracts have long since provided this benefit to all bargaining unit employees previously employed in those agencies. According to the Association, this proposal would have only a partial impact on a couple of departments. For example, the Association notes that West New York has long folded in their holiday benefit “beginning with the 23rd year of service.” However, the Association points out that recent changes in the standards for creditable salary within the Police and Fire Pension System have indicated that this may not be acceptable and will not pass a pension audit. According to the Association, its proposal provides an opportunity to correct for the recent revisions in the Pension requirements.

Emphasizing the nominal nature of the change it proposes, the Association points out that all employees with 23 years or more of service already receive the benefit. The Association reasons that since a high percentage of fire supervisors are at or above the 23rd year level, the impact is extremely small. Turning to Weehawken, where the fold in commences after 19 years of service, the Association asserts that the impact of its proposal with respect to former Weehawken employees is even smaller.

The Association also notes that implicit in its proposal is the concept that the value of the holiday benefit will be taken as pay. Emphasizing that there is

no provision in the proposal for any use of time off as a holiday benefit, the Association asserts that this concept would best advance the interest and welfare of the public because the while providing a holiday benefit, it guarantees that no time will be taken away from the job by virtue of that benefit. Noting that the nature of the public service requires that full time fire service be made available throughout the year, the Association argues that its proposal comes down on the side of dollars with maximum time being made available to the public and time off opportunities such as existed under the Weehawken contract would no longer be available. Emphasizing that the impact of the fold-in is much smaller for a supervisory unit than for a wall to wall unit or a unit of just non-supervisory personnel because supervisor's time to retirement is less, the Association urges adoption of its holiday fold in proposal.

Addressing its proposed paragraph C, which provides for a minimal two (2) hour meal time break to be provided to those who are on duty on four select holidays, the Association notes that the exact language is taken from the Union City contract. The Association maintains that this provision would allow for a Fire Officer to spend 120 minutes with his family on Christmas Day, subject to availability. The Association acknowledges that "no one expects the right to leave an emergent situation to have Christmas Dinner." According to the Association, 2 hour time frame includes all aspects of this special holiday break, including travel time. Additionally, the Association asserts that Fire Officers on this break would be in uniform and with their radio, but would have an opportunity

to briefly visit with his family for a meal on four special days per year. The Association maintains that the impact on the Regional would be small because not all Fire Officers will be working on the four holidays and days and the benefit only provides for a break during the daytime hours. The impact should be considered as extremely small. According to the Association, the brief meal break on four named holidays would be available for persons in non-emergent circumstances while on day shift and should not be considered as unduly burdensome.

According to the Association, its proposal is a reasonable approach to merging the various contract provisions, as all aspects exist in current contracts and are not burdensome. The Association prefers that any time-off for holidays be converted to compensation for paid holidays with the time actually worked. According to the Association, the folded in benefit has significant value to the employees and is similar to that which existed for most officers prior to the Regionalization.

I have examined the evidence with respect to comparability on this issue.

West New York and Union City firefighters receive fourteen (14) holidays per annum. North Bergen firefighters receive five (5) compensatory 12-hour tours. Weehawken firefighters received thirteen (13) paid holidays or a total of 104 hours.

Atlantic City Fire Officers receive fourteen (14) holidays, Harrison Fire Officers receive thirteen (13) holidays, Hillside Fire Officers receive 118 hours of holiday pay in lieu of granting certain legal holidays, and Hoboken Fire Officers receive fourteen (14) paid holidays at \$120 per holiday.

In comparisons around the country, New York City Fire Officers do not receive holiday pay; while Phoenix Fire Officers receive eleven (11) holidays, and San Diego Fire Officers receive ten (10) holidays per year.

The parties agree that holidays should be compensated on an eight-hour basis, but disagree as to the number of holidays as well as the circumstances under which Fire Officers should receive compensation. Turning first to the number of holidays, the Association proposes that Fire Officers receive fifteen (15) holidays per year, while the Regional proposes Fire Officers receive eight holidays per year. Under the previous agreements, with the exception of North Bergen, Fire Officers received between 13 (Weehawken) and 15 (Union City) holidays per year. In North Bergen, Fire Officers receive five (5) compensatory 12-hour tours or a total of 60 hours.

Additionally, Fire Officers throughout Hudson County and in New Jersey generally receive fourteen (14) holidays but hours received are not on a full 24-hour tour basis. The Association has established that holiday pay should be

received as compensation and included in base pay. Based upon an 8-hour standard, I award 112 hours of holiday pay for all Fire Officers commencing January 1, 2003.

The Association seeks to include a provision allowing Fire Officers who work on any of four major holidays to be off for two hours during their 24-hour tour to participate in a holiday dinner with their family. This proposal is based upon a provision in the previous Union City agreement which permitted Fire Officers working on any of four major holidays a two-hour break to enjoy a holiday dinner with their family. There is merit to the Regional's arguments both as to the cost of continuing and extending such a proposal as well as the concern that enacting such a proposal could result in less than adequate coverage to the Regional's communities. This proposal is denied.

In accordance with the above discussion, the Holidays article of the Agreement shall provide as follows:

1. There shall be 112 hours of holiday pay per annum effective January 1, 2003.
2. Payment for all holidays shall be considered as added to an employee's base salary.

PERSONAL DAYS

The **Association** proposes the following contractual language:

Each employee shall have two (2) personal leave days forty-eight (48) hours per year. For the purposes of this clause, an employee shall not be required to advise his Superior of the reasons for the personal leave day.

Employees must give the Employer twenty-four (24) hours notice of their intention to take a personal day and must receive approval from the Employer to insure that the employer has adequate personnel on hand to perform all necessary functions. In emergent circumstances the notice period may be waived. The said personal leave days shall be non-cumulative.

A denial of an application for personal time under this section by the Employer shall only be made for sufficient cause and any such denial may become the subject of a Grievance Procedure under this Agreement.

Personal leave time under this Article shall be granted in units of not less than four (4) hours for each occasion.

The Association seeks personal leave in order to provide Fire Officers with some time with flexible access. According to the Association, pre-existing contracts had varying types of time off with different types of access and availability. For example, the Association points out that in some departments holidays or comp days could be used as time off and accumulated time was available in some circumstances. The Association explains that it seeks two personal leave days per year in order to combine these concepts and still provide some measure of flexibility. According to the Association, it proposes that time be used in units of not less than four (4) hours to minimize disruption. The Association points out that it does not seek to provide personal time as a matter of right, but with limits, such as 24 hours notice, designed to minimize disruption. Additionally, the Association points out that it would grant the employer the flexibility and discretion to waive the notice period in emergent circumstances.

The Association notes that the days proposed are non-cumulative and are for unique circumstances and the only remedy provided for the denial of use of a personal day would be under the grievance procedure. The Association characterizes this proposal as a minimal impact item to provide for unique personal time such as weddings, birthdays, anniversaries, graduations, etc. The Association acknowledges that the employer could permit only a 4 or 8 hour block in any given circumstance.

The Regional points out that of the four (4) individual municipal contracts, provisions regarding personal days can only be found in the Union City contract, which provides two (2) personal days per year. The Regional points out that the Association's proposal differs from the Union City provision in that the Association's proposal does not require the employee to advise his superior of the reason for the personal leave day. The Association's proposal also differs from the Union City provision in that it requires 24 hours notice of intent to take a personal day and requires that denial of authorization of a personal day must be for sufficient cause. The Regional also notes that the Association's proposal includes a provision stating that personal time shall be granted in units of not less than four (4) hours for each occasion.

Given the paid time off provided elsewhere in this Award and the absence of personal days in prior contracts on a uniform basis, I deny this proposal.

OVERTIME

The **Regional** proposes the following contractual language:

Section 9.0: Rate

Employees shall receive all overtime payments to which they are entitled under the Federal Fair Labor Standards Act. Overtime shall be paid at the rate of time and one-half.

Section 9.1: Holdover Pay

Where a holdover beyond an employee's regular shift extends beyond thirty (30) minutes, such employee will be compensated at time and a half for a one (1) hour minimum and thereafter paid for actual time worked in quarterly increments at time and one half.

Section 9.2: Recall

An employee called in for overtime work shall be paid a four (4) hour minimum at the overtime rate of pay. The four (4) hour minimum shall not apply to employees held over following the termination of their regular duty shift or to employees who elect to leave when the work is done if the time worked is less than four (4) hours. In that event, overtime pay shall be only for actual time worked, computed to the nearest quarter hour.

Section 9.3: Court Appearances

An employee required to testify by the Employer during off-duty hours in a legal proceeding in connection with his duties as a Fire Department employee shall be compensated for the time so spent at a rate one and one-half times his normal rate for a minimum of four hours. No additional compensation shall be paid to bargaining unit members who make such appearances while on duty. Legal appearances in interest arbitrations, grievance arbitrations and Public Employment Relations Board proceedings will not be paid except when the member's testimony is required by the Employer.

Section 9.4: Off-Duty Training

When required by the Regional to attend training for the purpose of retaining certification of qualifications, or continuing education and training, employees will be compensated for off-duty training at their regular hourly rate. All tuition incurred in the required training programs will be paid by the Employer upon satisfactory completion of the course.

The **Association** proposes the following contractual language:

- A. Any employee may be required to work in excess of his regular day or work week, but must be paid at the rate of time and one half (1½) for all time so worked. Any employee whose regular schedule is as defined in Article VII shall be paid overtime for any day or part of a day in which he is required to work when such day is not the regularly scheduled work day for such employee.
- B. The base hourly rate shall be calculated by adding the employee's annual base wage together with the employee's longevity entitlement, education entitlement and holiday benefit divided by 2080.

Overtime shall be computed as time and one-half (150%) of the employee's hourly rate.
- C. All mandatory off duty details such as, but not limited to, parades, funerals and special events shall be considered as overtime.
- D. Any employee who is recalled to duty before or after his regular shift shall be guaranteed a minimum of four (4) hours at the overtime rate as set forth herein. However, employees on duty who are held over beyond their regular tour or who are available in the firehouse prior to the tour's commencement at the time of the issuance of the recall shall be paid on an hour for hour basis at the overtime rate as set forth herein. However in no event shall such contiguous to shift extra duty result in less than two (2) hours of overtime compensation.
- E. The employee shall have the sole option of being paid overtime in cash or in compensatory time off, which if paid in compensatory time off, shall not exceed a bank (Compensatory Time Bank) of four hundred and eighty (480) hours as prescribed by the Fair Labor Standards Act, as amended. The

employee shall have the sole option in each calendar year to convert into cash any compensatory time in lieu of overtime pay earned during that calendar year. Exercise of this option shall be made by the employee to the employer in writing on or before January 15th of the following calendar year and payment shall be made no later than the last pay period in January. Hours withdrawn in compensatory time from the Compensatory Time Bank shall be on an hour for hour basis.

- F. It is agreed that an overtime roster will be maintained by the Union. In the event a need arises to engage an employee on an overtime basis, the officer in charge shall request the appropriate Union official to call employees covered by this Agreement in or order of seniority. The overtime roster need not be used for fires or emergencies. The inability of the Union to timely secure required manpower shall be deemed an emergency.
- G. No employee shall be placed on standby unless he is compensated for such time on a straight time basis or compensatory time at the employee's discretion. If, while on standby, the employee is ordered to duty, Section D shall apply.
- H. Any employee recalled to duty in an emergency situation which by its nature cannot be preplanned (i.e. multiple alarms of fire) will be permitted pay for travel to report to his/her station or assignment calculated from the time of notification.

The procedure to be followed on arrival is: each employee shall report to the officer in charge or, in the absence of an officer in charge, shall use the fire station telephone and advise the Dispatcher that the employee has arrived at his station. The Dispatcher will make a note of the employee's name and time of arrival.

- I. If a recall is issued for an emergency, Fire Supervisors shall be hired or recalled at a ratio of one (1) Fire Supervisor for every three point five (3.5) fire-fighters recalled or hired. J. If at any time there are less than fourteen (14) supervisors (2 Chief Officers and 12 Line Officers) covered by this agreement on duty then all bargaining unit supervisors who are on duty shall be paid at the overtime rate.
- K. In the event of a recall, men shall be called on the basis of two lists. The first or priority list shall be an alphabetical list by rank of those men who live within the Employer's jurisdiction. The

second list shall be those personnel, by alphabet and rank, who live within a 15 mile radius from the employer's jurisdiction.

- L. Employees working the staff schedule shall be paid overtime for work in excess of seven (7) hours in a day, including meal and break periods, and over thirty-five (35) hours in a seven (7) day work week cycle.

The Regional reviews the previous agreements pointing out that under the North Bergen contract, overtime was awarded alphabetically and was computed as follows: (a) no pay was granted for time equating to fifteen (15) minutes or less; (b) one-half ($\frac{1}{2}$) hour pay for time equating to sixteen (16) through thirty (30) minutes; (c) one (1) hour pay for time equating to thirty-one (31) through sixty (60) minutes; and (d) full pay on all hours or fractions thereof worked for time equating to sixty (60) minutes or longer. Fire Officers on recall were paid for a four (4) hour minimum from the time they signed the log. Under the Union City agreement, employees who remained on duty after their tour at the Department's request would be compensated at one and one-half ($1 \frac{1}{2}$) times their hourly rate, and the minimum compensation would not be less than one (1) hour's pay. Recalled Fire Officers were compensated at one and one-half ($1 \frac{1}{2}$) times their hourly rate for a minimum of four (4) hours. Recalled Fire Officers were considered on duty from the time the officer received the call until the time he was relieved from duty. Under the Weehawken contract, Fire Officers kept on duty past their relief time received a two-hour minimum guarantee at the overtime rate. Under the West New York contract, a Fire Officer required to work in excess of his regular tour was paid at the rate of one and one-half ($1 \frac{1}{2}$) and a

recalled Fire Officer was paid a four hour minimum guarantee at the overtime rate.

Reviewing the testimony, the Regional points to Cpt. McGorty's testimony that the Association's proposal requires that Fire Officers be paid at time and one-half (1 ½) for all extra work beyond regularly scheduled work, as is provided in the Weehawken agreement. The Regional points to Cpt. McGorty's testimony that under the Association's proposal, the base hourly rate would be calculated by adding the employee's annual base wage together with the employees' longevity entitlement, education entitlement and holiday benefit divided by 2,080. In contrast, the Regional highlights that in Weehawken, the base hourly rate was based on 2,184 hours.

The Regional also points to Cpt. McGorty's testimony that the four hour minimum guarantee included in Paragraph D of the Association's proposal is similar Weehawken, though in Weehawken, Fire Officers were entitled to a two hour minimum guarantee if they were held over. The Regional points out that the provision for overtime compensation for ceremonial appearances included in the Association's proposal is without match in the Weehawken agreement. The Regional cites Cpt. McGorty's testimony that while the ceremonial appearances were often paid at time and one half, the employer determined whether "it would be paid in cash or in comp time."

Turning to paragraphs G, K and L of the Association's proposal, Cpt. McGorty acknowledged that Weehawken's contract did not contain similar provisions, though he testified that the order of recall enumerated in Paragraph K was the Town's practice.

The Regional cites Sanzari's testimony that while an Officer for West New York, he received overtime in the amount of time and one-half (1 ½) and he received overtime for mandatory details such as parades and funerals, though parades were voluntary. Additionally, the Regional points out that the number of hours used as a divisor in the West New York contract was 2080 and West New York Fire Officers received a minimum guarantee of four hours overtime upon recall, but the Town had the option to pay for the overtime in cash or with compensatory time.

The Regional also cites the testimony of Lt. Focht that the Union City agreement provided overtime for work in excess of a normal workday, which was paid in cash. Additionally, Union City Fire Officers received a one (1) hour minimum if they were held over and a four (4) hour minimum if they were recalled to duty. The Regional reviews Lt. Focht's testimony that overtime "was administered by a union member, a list was made up by seniority and members would be called and offered the overtime. If they refused, their name would be crossed off and the person would move to the next eligible individual." According to the Regional, in Union City a Fire Officer had the right to refuse overtime

except in the case of emergency. Additionally, the Regional points out that when Fire Officers were called in on an emergency, they were paid from the time of acceptance of the phone call. In Union City, the Agreement employed a divisor of 2080 hours for purposes of overtime calculation.

The Regional referred to Captain Zavardino's testimony to explain the overtime compensation provisions in North Bergen. According to Captain Zavardino, for the first fifteen (15) minutes of work in excess of the twenty-four (24) hour workday the Fire Officer would not be compensated at the overtime rate, but, "there on after, you would be paid from the 16th minute through the 30th minute, you get 30 minutes, and then from the 31st minute to the 60th minute, you would get one hour, and then thereafter, you'd get time and a half or part thereof of work." The Regional again relied upon Captain Zavardino's testimony that there were two (2) types of recall in North Bergen; shift recall, where Fire Officers were paid from the time they arrived at the fire house with a minimum four hour guarantee, and emergency recall.

The Association points out that its overtime proposal is a compilation of the overtime provisions from the predecessor agreements and the parallels to those agreements is clear. According to the Association, each of the predecessor contracts contain the requirement that time and one-half overtime compensation be paid for all work performed in excess of the regular work day or work week. The Association maintains that It is clear that the "beyond regular

work week or tour of duty” language is not applicable only to persons on the 24 hour shift, but to those on a “staff schedule” as well. Accordingly, the Association asserts that paragraph A of its proposal is clearly supported by each of the previous contracts and does not provide additional rights.

Referencing Paragraph B of its proposal, the Association includes a divisor of 2,080 hours for calculation of overtime. According to the Association, not all of the contracts in evidence specify 2,080 hours, but it is clear that this was a prevalent practice. The Association notes that the Regional did not offer testimony on this issue.

According to the Association, Paragraph C of its proposal codifies current practice. The Association would define “Mandatory off duty details” by stating that if a detail is mandatory then it is employer initiated and required and these special events should be considered overtime. The Association maintains that including this definition in the agreement is likely to forestall future grievances.

The Association explains that Paragraph D of its proposal that where an employee is called to duty before or after regular shift work then there should be a minimum of four hours and where the employee is held over then such hold over time shall be on hour for hour basis. According to the Association, it is not proposing that the extension of an extra hour on normal shift would result in four hours of extra pay. But, when an employee is called to duty in other

circumstances a four hour minimum should apply. The Association maintains that a four hour minimum was the prevalent practice in departments that existed prior to the regionalization in Weehawken, Union City, and North Bergen and is a codification of a long standing practice.

The Association explains that Paragraph E of the proposal provides the employee with the option of taking overtime compensation as paid compensation (time and one-half) or as compensatory time off, also calculated at the time and one-half rate and creates a compensatory time off bank for up to 480 hours in accordance with the Fair Labor Standards Act. Acknowledging that the practice of permitting a compensatory time off bank was not uniform among the individual Fire Departments which existed prior to regionalization the Association notes that some permitted it and some did not. However, the Association maintains that the benefit to the public of providing a compensatory time option permits the employer to control the timing of the use of the compensatory time in a manner that will not lead to additional overtime expenditures and allows the absorption of the overtime obligation so that its financial impact is minimal. Additionally the Association maintains that if the employee who has earned the overtime selects cash payment then there is no additional impact on the employer. Accordingly, the Association asserts that its position can be only helpful to the employer and will in no way impede or create extra burden on the employer. The Association acknowledges that there may be minimal to no impact, to the extent that there is impact it is beneficial to the public from a fiscal standpoint.

Turning to Paragraph F, which proposes the maintenance of an overtime roster with employees called to extra duty in order of seniority, the Association points out that each of the pre-existing Fire Departments had a form of this system in their contracts or in their practices, but the specific model for its proposal is the West New York contract.

According to the Association, the reason that these practices are of long standing and universal existence prior to regionalization is that they make good employer-employee relations because they provide equal opportunity for extra overtime, for the burden of extra work, and for the opportunity to make an extra dollar. According to the Association, each of the pre-existing Fire Departments had a system of equitable distribution of overtime from a rotating seniority roster. And a similar rotation exists today.

Addressing Paragraph H of its proposal, the Association notes that it seeks a standardized procedure for recall compensation. Emphasizing that PERC ruled that this language was a mandatory subject of bargaining, the Association asserts that it seeks to codify a longstanding practice. According to the Association, in the case of a “special call out” where an employee is required to leave their home and report to a location on an emergency basis, the proper calculation should be, and for the most part has been, from the employee’s point of notification to the work place and return. In support of its position, the

Association cites the provision in the Union City agreement which provided as follows:

When an employee is recalled to duty, he shall be considered on duty from the time he received the call until the time he is relieved from duty. The parties understand and agree that an employee killed or injured while reporting to a recall emergency is considered "on duty" as if said injury or death had occurred out of an accident arising out of performance of duty while during his regular scheduled work tours with the City of Union City Fire Service.

The Association asserts that this is another example of a prevalent practice that in some cases has been incorporated specifically within contract language of the pre-existing bargaining units. According to the Association, this is an important benefit to the employees being recalled on an emergency basis should be protected from the time that their off duty activities were interrupted. Noting that situations where an employee is directed to report to other than his normal fire station are management prerogative, the Association highlights the equitable issue that the employee is under the employer's direction and control, but may have to travel a considerable distance to and from the work place, it is possible that the fire may be under control or the emergency abated prior to said employee's arrival. Accordingly, the Association argues that the totality of employer control, from notification through return, should be compensated time and so calculated. Additionally, the Association asserts that this provision would protect the employee under worker's compensation and principles of general liability.

The Association notes that the standby time provisions of paragraph G of its proposal are the same as to those found in the West New York contract and the provision does not create new rights. The Association acknowledges that paragraphs I and J have been ruled as non-mandatory subjects by PERC, notwithstanding decades of experience of this identical language and certain contracts with departments making up the Regional.

According to the Association, the language of Paragraph K is to be considered with the rotational language referenced under the explanation of paragraph F. The Association maintains that this procedure is one of long standing and should be incorporated into the contract as a common sense fire practice.

Addressing paragraph L, the Association notes that it defines overtime for persons working on the “staff schedule” and does not add or subtract from the current and long standing practices for those departments that had such schedules before the regionalization. The Association maintains that it is the current practice at the Regional organization today and it seeks only a clear definition as to the overtime threshold for such employees.

As noted above, various practices and provisions predated regionalization in the municipal fire departments. These issues should be unified in the regionalized department. The initial question concerns the overtime rate.

The record reflects that the Regional is paying a substantial amount of overtime. This may be due to several factors including administering the transition and the decrease in manpower. The Regional's proposal could, more than likely, reduce overtime costs because it would eliminate some excess hours over normally scheduled hours. But such change would represent a significant departure from overtime schemes which previously had been administered in the municipalities. The Association's proposal, as it relates to staff fire officers would provide overtime benefits more generous than those provided under the Fair Labor Standards Act and would increase overtime costs. I award the following:

- A. Overtime shall be paid for all hours worked in addition to the employee's normal schedule hours as well as entitlements under the Fair Labor Standards Act (FLSA). The overtime rate shall be calculated by dividing the employee's annual salary by 2080 hours times one and one-half (1 ½).

The record reflects that the Association's seniority rotation for overtime proposal is largely consistent with the system which the Regional has administered and there is no evidence that this system has not worked or filled its necessary manpower requirements. However, the Association's proposal that would treat any instance in which it could not timely secure the necessary manpower as an emergency for pay purposes is not awarded. Thus, I award the Association's proposal as follows:

All mandatory off duty details such as, but not limited to, parades, funerals and special events shall be considered as overtime.

It is agreed that an overtime roster will be maintained by the Union. In the event a need arises to engage an employee on an overtime basis, the officer in charge shall request the appropriate Union official to call employees covered by this Agreement in or order of seniority. The overtime roster is not to be used for fires or emergencies.

The Regional has proposed overtime compensation when an employee is required to testify by the Regional when off duty. The Regional's proposal is awarded as follows:

Off Duty Testimony

When an employee is required to testify in a legal proceeding in connection with his duties in the fire department, the employee shall be compensated for the time so spent at a rate of one and one-half times his normal rate for a minimum of four hours.

I do not award the Association's proposal to allow an employee, at his or her discretion, to take compensatory time in lieu of cash for overtime earned. Such benefit was not widespread among the municipalities. Further, the staffing levels for the Regional at the time of hearing do not appear to be sufficient to support additional paid time off for this purpose which could create the need for additional overtime.

I also do not award the Association's proposal for portal to portal pay when a Fire Officer is recalled to duty in an emergency situation because Fire

Officers recalled to duty will be entitled to minimum call in pay. On the latter issue, each party proposed a four hour guarantee if a Fire Officer elects to leave prior to the completion of the four hour shift although the Regional's proposal would pay for only those hours worked. I award the Association's proposal to the extent that it addresses recall compensation. The issue of time actually required after a recall should be left to the discretion of the Fire Officer's superior. The Association would extend the four hour minimum for recall to situations where employees are held over or called in just before their regular shift. A guaranteed minimum for early call-in is reasonable but the Association's proposal is excessive given the fact that the call-in is linked to the employee's normal work shift. Under these circumstances, a two (2) hour guarantee is more reasonably linked to the inconvenience for the early call-in. I award:

Recall Compensation

The compensation required to be paid to employees who have been recalled to duty shall be a minimum four (4) hour's overtime pay, at the rate of time and one-half (1 ½). Time actually required after a recall shall be left at the discretion of the Fire Officer's immediate superior. The four (4) hour minimum shall not apply to employees held over following the termination of their regular shift.

Early Call-In

Any employee required to report to duty prior to their assigned start time shall be guaranteed a minimum of two (2) hours at the overtime rate.

Each party has a proposal concerning holdover pay. The Regional's proposal that to pay for time beyond thirty minutes is not equitable and is susceptible to

potential abuse. The Association's proposal requiring overtime pay of at least two hours when held over is unreasonable. I award the following which I believe reasonably balances the parties' positions on this issue:

Holdover Pay

Where a holdover beyond an employee's regular shift extends beyond fifteen (15) minutes, such employee will be compensated at time and a half for a one (1) hour minimum and thereafter paid for actual time worked in quarterly increments at time and one half.

The Association's proposal in Paragraph I, which specifies the number of fire supervisors required in the event of an emergency has been found not to be a mandatory subject for negotiations and is not awarded.

The Regional's proposal regarding off-duty training guarantees compensation for required off-duty training but at an employee's regular hourly rate. Because required off-duty training is in addition to normally scheduled working hours, compensation should be set at the overtime rate rather than at the regularly hourly rate. The Regional retains the discretion to require training during the regularly scheduled workweek. Accordingly, I award:

Compensation for Off-Duty Training

When required by the Regional to attend training for the purpose of retaining certification of qualifications, or continuing education and training, employees will be compensated for off-duty training at the overtime rate. 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.

The Association proposes that Fire Officers shall not be placed on standby without compensation on a straight time basis. Additionally, the Association proposes that a Fire Officer on stand-by who is called in shall be compensated in accordance with the recall provisions.

Accordingly, the overtime clause shall provide as follows:

Overtime Rate

Overtime shall be paid for all hours worked in addition to the employee's normal schedule hours as well as entitlements under the Fair Labor Standards Act (FLSA). The overtime rate shall be calculated by dividing the employee's annual salary by 2080 hours times one and one-half (1 ½).

Overtime Call in

It is agreed that an overtime roster will be maintained by the Union. In the event a need arises to engage an employee on an overtime basis, the officer in charge shall request the appropriate Union official to call employees covered by this Agreement in or order of seniority. The overtime roster is not to be used for fires or emergencies.

Mandatory Off-Duty Detail

1. All mandatory off-duty details such as, but not limited to, parades, funerals, and special events, shall be considered as overtime.

Off Duty Testimony

When an employee is required to testify in a legal proceeding in connection with his duties in the fire department, the employee

shall be compensated for the time so spent at a rate of one and one-half times his normal rate for a minimum of four hours.

Recall Compensation

The compensation required to be paid to employees who have been recalled to duty shall be a minimum four (4) hour's overtime pay, at the rate of time and one-half (1 ½). Time actually required after a recall shall be left at the discretion of the Fire Officer's immediate superior. The four (4) hour minimum shall not apply to employees held over following the termination of their regular shift.

Early Call-In

Any employee required to report to duty prior to their assigned start time shall be guaranteed a minimum of two (2) hours at the overtime rate.

Holdover Pay

Where a holdover beyond an employee's regular shift extends beyond fifteen (15) minutes, such employee will be compensated at time and a half for a one (1) hour minimum and thereafter paid for actual time worked in quarterly increments at time and one half.

Compensation for Off-Duty Training

When required by the Regional to attend training for the purpose of retaining certification of qualifications, or continuing education and training, employees will be compensated for off-duty training at the overtime rate. 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.

EDUCATION INCENTIVE

The **Regional** proposes the following contractual language:

Section 8.3: \$1,000.00 per year will be added to base pay for an A.A. degree in Fire Science or Fire Science Technology.

Section 8.4: \$1,500.00 per year will be added to base pay for a B.A. degree in Fire Science or Fire Science Technology.

The **Association** proposes the following contractual language:

- A. The employer recognizes the value of additional education for Superior Officers.
- B. The following schedule shall apply:

30 credits of Fire Science	1.5% of annual base
Associates Degree	5% of annual base
Bachelor's Degree	10% of annual base
- C. All educational entitlement as provided by paragraph B of this Article shall be folded in and paid along with regular payroll. Said entitlement shall be used for all computation purposes.
- D. Any employee furthering his/her education in an accredited institution of higher learning, and is enrolled in a course, which course is a Fire Safety related course, shall be paid annually ten (\$10.00) dollars for each credit earned in addition to his base salary, provided he is not encompassed within paragraph A or B above.

The Regional proposes an educational incentive for its Fire Officers who have received certain college degrees that would add \$1000 per year to a Fire Officer's base pay for an A.A. degree in Fire Science or Fire Science Technology and would add \$1500 per year to a Fire Officer's base pay for a B.A. degree in Fire Science or Fire Science Technology. The Regional points out that the Association seeks to include a percentage based educational incentive ranging from one and one-half percent (2.5%) to ten percent (10%) that would be folded in and paid along with regular payroll and would be used for all computation purposes.

Emphasizing that the rationale behind educational incentive payments is to reward a Fire Officer for his hard work and dedication in receiving a fire science or fire technology degree and that it provides the added benefit of more qualified Fire Officers. The Regional maintains that these objectives are best accomplished by establishing a flat dollar rate. The Regional asserts that any proposed percentage actually has a compounding effect and thus disproportionately rewards Fire Officers for the attainment of their degree. The Regional reasons that a percentage incentive would not only reward a Fire Officer for his education and degree, but would provide a “hidden” annual salary increase. The Regional notes that the Association did not offer testimony that would justify an additional salary increase for its Fire Officers. Accordingly, the Regional urges adoption of its flat rate proposal and urges rejection of the Association’s percentage proposal, including the provision of \$10.00 per credit earned to those officers who are not already receiving an educational incentive. The Regional maintains that Fire Officers should receive a monetary benefit only after they receive a college degree.

The Association urges adoption of its Educational Incentive plan, which is from the Union City contract. The Association points out that the concept of a percentage value being placed at various levels of completed credits is also included in the West New York agreement, which also provides \$15.00 per credit

for each qualified credit. Likewise, the Association points out, the Guttenberg agreement also provides for a \$15.00 per credit value.

According to the Association, a percentage based education incentive is the most frequently found form of computation and the folding in of the benefit is appropriate to ensure inclusion within Pension entitlement. The Association also urges that the Fire Safety course provision set forth in paragraph D should be considered as a public benefit which would serve the interest and welfare of the public.

Both parties propose education incentives. The Regional would standardize the education incentive by adding \$1,000 per year to base pay for all Fire Officers with an Associate's degree in Fire Science or Fire Science Technology and \$1,500 per year will be added to base pay for a Bachelor's degree in Fire Science or Fire Science Technology. The Association proposes language that would retain education incentive benefits for Fire Officers with college degrees in majors other than fire science or fire technology.

Specifically, the Association proposes that Fire Officers who have earned an Associates Degree receive an additional 5% of their annual base salary and those who have earned a Bachelor's Degree receive an additional 10% of the annual base salary, in both instances without reference to the nature of the degree. The Association proposes that Fire Officers who have earned 30 credits in Fire Science receive an additional 1.5% of annual base salary.

The previous agreements in West New York, Union City and North Bergen included an educational incentive. The previous agreement in North Bergen included an educational incentive for studying toward and/or earning a degree in public safety or fire science. Although Fire Officers were not compensated or reimbursed for attending courses, they received 1% of base salary for 30 college credits in fire science, 2% of base salary for an Associate's Degree, 3% of base salary for 90 college credits; 4% of base salary for a Bachelor Degree; 4.5% of base salary for a Masters Degree and 5% of base salary for a Doctorate.

In Union City, Fire Officers received 2.5% of annual base salary in the form of an annual payment if they had earned an Associate's degree and 5% of annual base salary in the form of an annual payment if they had earned a Bachelor degree before January 1, 1975. Those Union City Fire Officers who earned an Associate's degree on or after January 1, 1975 received an additional 5% of annual base salary in the form of an annual payment. Those Union City Fire Officers who earned a Bachelor degree on or after January 1, 1975 received an additional 10% of annual base salary in the form of an annual payment. Additionally, in Union City, any Fire Officer who on or after January 1, 1975 who has earned credits in fire safety related courses, received \$10.00 annually for each credit earned

The Association further proposes that Fire Officers who are enrolled in a course, which is a Fire Science course, shall be paid annually \$10.00 for each credit earned provided that he has not yet received a degree for which he is receiving an education incentive. In Union City, any Fire Officer who on or after January 1, 1975 who has earned credits in fire safety related courses, received \$10.00 annually for each credit earned. In West New York, Fire Officers received an annual stipend of \$15.00 per qualified college credit completed payable each September.

The Association proposes that these incentives be added to base salary and be included in their base pay. In Union City education incentives were paid in an annual lump sum and West New York Firefighters received an annual stipend. The North Bergen agreement is silent as to how the education incentive is paid.

The issue of education incentive pay is an example of a benefit which is difficult to merge or unify for Fire Officers. Most, if not all, were previously employed in the municipal departments. The benefit itself is a reward for educational progress and attainment and was given widely different treatment among the various municipalities. The Regional's proposal to have a single benefit for all Fire Officers is reasonable to the extent that not all Fire Officers previously enjoyed this benefit. This view, however, must be weighed against the longstanding nature of the benefit, where previously provided, and the time

and effort invested by each Fire Officer towards the incentives and goals required by the prior contracts in order to achieve the benefit. To disturb each prior scheme for those who have earned degrees or commenced participation towards a degree would be inequitable. Thus, I award the following:

Educational incentives shall be provided for all unit employees based upon the standards below:

- A. Fire officers employed by the Regional who were previously employed in the municipal departments and, as of the date of this award, have commenced matriculation in higher education for credit, shall retain all aspects of education incentives, if any, previously provided in the labor agreements in those departments.
- B. Fire officers employed by the Regional who were previously employed in the municipal departments and, as of the date of this award, have not commenced matriculation in higher education for credit, shall receive education incentive in a fashion identical to Fire Officers hired by the Regional on or after regionalization.
- C. Fire officers hired by the Regional on or after regionalization shall receive \$750 per year for an A.A. degree at an accredited institution or \$1,250 for an A.A. degree at an accredited institution for fire science or fire science technology.
- D. Fire officers hired by the Regional on or after regionalization shall receive \$1,500 per year for a B.A. degree at an accredited institution or \$2,500 for a B.A. degree at an accredited institution for fire science or fire science technology.
- E. Educational compensation as provided herein shall be included in base salary and paid in equal installments included in the members bi-weekly salary.

SALARIES

The **Regional** proposes the following contractual language:

Section 8.0: The annual base salary for all employees covered by this Agreement shall be as follows. Upon completion of one year of service in the rank, employees will become entitled to each successive step.

Lieutenant

	7/1/00*	7/1/01*	7/1/02*	7/1/03*
First Step	54,500			
Second Step	55,500			
Third Step	56,500			
Fourth Step	57,500			

** to be negotiated*

The rates set forth in the above schedule shall not reduce any Fire Officer's base salary compensation currently paid and received. Such current rate of pay shall be red-circled until the rates provided on the above schedule become equal to or greater than the Fire Officer's current base salary.

Any individual promoted to the rank of Lieutenant shall be placed at the next higher salary step from their existing guide's base salary and in no event shall an individual receive a promotional increase of less than \$1,500 to his base salary. If the promotional increase exceeds the above stated salary guide, the individual shall receive the greater salary and the salary rate shall be red-circled until the rates are otherwise increased.

Captain

	7/1/99	7/1/00*	7/1/01*	7/1/02*	7/1/03*
First Step	63,000				
Second Step	64,000				
Third Step	65,000				
Fourth Step	66,000				

** to be negotiated*

The rates set forth in the above schedule shall not reduce any Fire Officer's base salary compensation currently paid and received. Such current rate of pay shall be red-circled until the rates provided on the above schedule become equal to or greater than the Fire Officer's current base salary.

Any individual promoted to the rank of Captain shall be placed at the next higher salary step from their existing guide's base salary and in no event shall an individual receive a promotional increase of less than \$1,500 to his base salary. If the promotional increase exceeds the above stated salary guide, the individual shall receive the greater salary and the salary rate shall be red-circled until the rates are otherwise increased.

Battalion Chief

	7/1/99	7/1/00*	7/1/01*	7/1/02*	7/1/03*
First Step	71,000				
Second Step	72,000				
Third Step	73,000				
Fourth Step	74,000				

** to be negotiated*

The rates set forth in the above schedule shall not reduce any Fire Officer's base salary compensation currently paid and received. Such current rate of pay shall be red-circled until the rates provided on the above schedule become equal to or greater than the Fire Officer's current base salary.

Any individual promoted to the rank of Battalion Chief shall be placed at the next higher salary step from their existing guide's base salary and in no event shall an individual receive a promotional increase of less than \$1,500.00 to his base salary. If the promotional increase exceeds the above stated salary guide, the individual shall receive the greater salary and the salary rate shall be red-circled until the rates are otherwise increased.

Deputy Chief

	7/1/99	7/1/00*	7/1/01*	7/1/02*	7/1/03*
First Step	82,000				
Second Step	83,000				
Third Step	84,000				
Fourth Step	85,000				

** to be negotiated*

The rates set forth in the above schedule shall not reduce any Fire Officer's base salary compensation currently paid and received. Such current rate of pay shall be red-circled until the rates provided on the above schedule become equal to or greater than the Fire Officer's current base salary.

Any individual promoted to the rank of Deputy Chief shall be placed at the next higher salary step from their existing guide's base salary and in no event shall an individual receive a promotional increase of less than \$1,500.00 to his base salary. If the promotional increase exceeds the above stated salary guide, the individual shall receive the greater salary and the salary rate shall be red-circled until the rates are otherwise increased.

Section 8.1: The hourly rate shall be the sum of employee's annual compensation (base salary and longevity) divided by 2080 hours, as defined by the Federal Labor Standards Act.

WAGE SCHEDULE

The **Association** proposes the following contractual language:

1. Employees covered by this Agreement shall be compensated consistent with the base wage Schedule A annexed.
2. The higher rate shall be paid upon promotion of an employee.
3. The employer shall maintain a deferred compensation plan available to all employees covered by this Agreement on a voluntary basis.

APPENDIX A

EFFECTIVE 1/1/99

Company Officer (Lt. & Capt.)	\$77,554
Battalion Chief	\$87,188
Deputy Chief	\$99,826

The Association proposes that salaries for each rank be unified at the commencement of the contract and that before unification, the salaries of Lieutenants and Captains be unified. The unification would be at the highest level in each instance. The Association contends that the costs involved not be charged to the economic package because they are “start up” costs. The costs total \$801,121 or approximately 13% above the base salary costs of \$6,628,031. The Association then proposes a 6% increase in each year of the agreement for a total of 30% above the 13% unification cost.

The Association commences its economic case by noting that as one component of the conversion to a regional department, the Department of Personnel reclassified bargaining unit members into three specific job titles:

Fire Officer 1
Fire Officer 2
Fire Officer 3

The Association emphasizes that the Department of Personnel listed duties and responsibilities for these titles as follows:

The duties and responsibilities associated with the functions of “Company Officers”, serving as first-line supervisors of a group of Firefighters assigned to an engine or truck company, have been classified under the title of Fire Officer 1. Employees found to be performing these duties, who previously held permanent Merit System status in the titles of Fire Lieutenant or Fire Captain will be granted a lateral title change to Fire Officer 1 in accordance with the provisions of Merit System rule NJAC 4A:4-7.6. Under this rule,

the affected employees will hold permanent status in the title of Fire Officer 1 and will be granted the same Merit System seniority in the title of Fire Officer 1 as they held in the title of Fire Lieutenant or Fire Captain.

The duties and responsibilities associated with the supervision of a fire battalion consisting of a group of fire companies, each headed by a Fire Officer 1, have been classified under the title of Fire Officer 2. Employees found to be performing these duties, who previously held permanent Merit System status in the title of Battalion Fire Chief, will be granted a lateral title change to Fire Officer 2 in accordance with. The affected employees will hold permanent status in the title of Fire Officer 2 and will be granted the same Merit System seniority in the title of Fire Officer 2 as they held in the title of Battalion Fire Chief.

The duties and responsibilities associated with the supervision and administration of a fire platoon consisting of a group of battalions, each headed by a Fire Officer 2, have been classified under the title of Fire Officer 3. Employees found to be performing these duties, who previously held permanent Merit System status in the title of Deputy Fire Chief, will be granted a lateral title change to Fire Officer 3 in accordance with NJAC 4A 4-7.6. The affected employees will hold permanent Merit System status in the title of Fire Officer 3 and will be granted the same Merit System seniority as they held in the title of Deputy Fire Chief.

The Association notes that this ruling has not been appealed and it has incorporated the new titles into its proposal. The Association refers to a Fire Officer 1 as a "Captain", a Fire Officer 2 as a "Battalion Chief", and a Fire Officer 3 as a "Deputy Chief". The Association bases its salary calculations on the following current base total salaries:

**CURRENT BASE TOTAL
(Per Current Contract)**

West NY

LT.	62,328	2	124,656	
CPT.	72,924	9	656,316	
B.C.	84,322	2	170,644	
D.C.	99,826	4	399,304	
				1,350,920

North Bergen

LT.	61,665	12	739,980	
CPT.	70,916	7	496,412	
B.C.	81,552	6	489,312	
D.C.	93,786	—	—	
				1,725,704

Union City

LT.	67,489	19	1,282,291	
CPT.	77,554	2	155,108	
B.C.	81,552	6	348,752	
D.C.	96,821	1	96,821	
				1,882,972

Weehawken

LT.	65,000	5	325,000	
CPT.	71,393	14	999,502	
B.C.	83,479	3	250,437	
D.C.	93,496	1	93,496	
				1,668,435

Total Base Cost				6,628,031
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This chart includes the municipalities with previous contracts, with the previously used titles for each rank, as well as actual pay rates for each rank and the number of employees in those ranks. The last column includes the cumulative value of multiplying the pay rate by the number of employees in each position. Based upon these calculations, the total cost for the bargaining unit is \$6,628,031.

The Association emphasizes that a key element of its proposal is the immediate equalization of compensation programs from the previously existing departments into the new Regional entity starting in 1999. The Association notes that the previous chart overstates the cost of the union package by \$321,000 due to the aberration created by the former Weehawken Department under the title of "Lieutenant". According to the Association, an unfair practice charge is pending at PERC in which it is asserted that since there was no prior title of Lieutenant in the Weehawken Fire Department that the post-regionalization promotion of certain persons to the newly created rank of Lieutenant was improper. According to the Association, these people should have been promoted to Captain as a result the cost factor for equalization of Lieutenant. It adds cost of that Lieutenant to Captain conversion which in fact should not be attributable to the Association's proposal. The Association maintains that if these people were properly promoted at the outset, then there would be no cost of conversion.

The Association explains that it has created an Adjusted Pay Rate, or a point of convergence for each position at the highest rate for each respective position under the previous contracts. For example, the Association explains further that the highest rate of compensation for a Deputy Chief was in West New York under the prior contracts, where the Deputy Chiefs' pay rate was \$99,826. The Association maintains that under its proposal, there is no cost of conversion for that pay rate as no adjustment is necessary. However, under the Union City

agreement the Deputy Chiefs' pay rate in the preexisting contract was \$96,821, so the adjusted pay rate for those officers would be \$99,826 and the difference between the pre-existing and adjusted pay rate of \$3,005. The Association notes that there is one person in the "current census" column in the rank of Deputy Chief from the pre-existing Union City employee group, so the total "Adjustment" is \$3,005. The Association uses the same methodology for each town and title to arrive at a total cost of pay convergence of \$801,121.

The Association then combines the working titles into the Fire Officer 1, Fire Officer 2 and Fire Officer 3 job titles at single pay rates. As a result, it unifies the West New York Lieutenant's position pre-existing Regionalization (\$62,328) and Captain's position (\$72,924) at its proposed Fire Officer 1 pay rate of \$77,554. After this unification process, the Association's proposal includes only three pay rates: Fire Officer 1 (\$77,554), Fire Officer 2 (\$87,188), and Fire Officer 3 (\$99,826).

The Association also seeks the immediate unification of longevity at the highest level now set at 21%. This proposal is asserted to support the logic of its consolidation process. The Association relied upon the testimony of its financial expert Vincent Foti. According to the Association, Mr. Foti explained that he determined how many officers fell into each number of years, and then applied a weighted average to create a value at conversion to the Association's proposal. (Un. Ex. #64). Then, according to the Association, Mr. Foti compared the current

longevity benefit received by Fire Officers to the benefit they would receive under the Association's proposal. For example, Mr. Foti explained that there would be no difference for the Union City Fire Officer, but a hypothetical West New York officer receiving 12% in longevity under the previous West New York agreement would receive 17% under the Association's proposal. Accordingly, Mr. Foti concluded that using weighted averages of years of service multiplied by the proposed adjustment for the entire bargaining unit resulted in a total cost of \$233,094.

According to the Association, the methodology and the counting progression used by Mr. Foti has enabled the convergence of pay rates and longevity schedules. All pay rates, as result of these calculations are the common rate for Fire Officer 1, 2 and 3. The Association notes that all of the longevity schedules are now merged with exact and statistically significant calculations into the Union City longevity program under its proposal.

According to the Association, under its calculation, the total cost for the base wage adjustment is \$801,121 and the total cost for the longevity convergence to the new schedule with all persons being on the Union City longevity program is \$233,094, and the sum of these adjustments is \$1,034,215.00. The costs would be implemented prior to the five annual 6% increases commencing July 1, 1999. According to the Association, the offsets to the convergence sum are significant and the current employee costs for this

bargaining unit are less than the costs for the pre-existing multiple municipal departments before regionalization. The Association relies upon Mr. Foti's testimony regarding a unique provision of the State backed Regionalization effort in which the State funded a retirement plan, creating enormous savings. The Association highlight's Mr. Foti's testimony that the State provided funds for an early out incentive that provided up to five years of credit towards retirement for employees with 20 or more years of service and that based upon the total number of employees who took advantage of that early out incentive and their salaries, the savings is \$2,256,082.

Accordingly, the Association asserts that the cost of \$1,034,215 seems high in the abstract, but it is actually less than one-half the savings created by the early out retirement option funded by the State. The Association emphasizes that employer census actually costs over \$2.25 million less to manage now than it did before the Regionalization. In comparison, the Association notes that the cost of its entire convergence program including wage convergence (\$801,121) and longevity convergence (\$233,094) together costs approximately 45% of the amount saved through State financed early out retirement incentives. The Association asserts that the savings generated by the retirement incentive could fund its entire proposal for convergence of pay rate and the implementation of the Union City longevity plan. The Association notes that in addition to the \$2.25 million in base rate savings there are additional savings in longevity, and benefits. The Association asserts that the early out incentive was an enormous

bargain for the municipalities and it seeks to share less than half of the savings to achieve the once only requirement of creating convergence and catch up so that all bargaining unit employees will be compensated at the same Fire Officer level and will meet the statutory mandate.

Turning to the remaining statutory criteria, the Association asserts that the best universe for comparison is the Regional itself, because the municipalities that form the Regional have been acknowledged both by law and by the employer by the creation of the Regional entity, as being paramount. The Association maintains that the starting point for the agreement is to coordinate the benefits to ensure that no employee has a loss. Accordingly, the Association asserts that the goal of coordination is to bring employees to the highest point for each area of compensation as the Regional is created. The Association is mindful that the Regional entity is the unilateral creation of the five employers rather than the result of a public referendum or vote or the result of a discussion or negotiations with the Association.

Once unification of salary and longevity have been achieved, the Association asserts that employees must be provided with reasonable increases from the new unified level. According to the Association, the costs of coordination of salaries and longevity are “start up costs” and should not be considered as ordinary wage increase elements. The Association suggests that like the fire houses and equipment purchased from the municipalities by the

employer, the Regional should now pay for the coordination of compensation programs. According to the Association, the cost of acquiring property and equipment is no different from the cost of acquiring a work force. Therefore, the Association argues, the start up costs should be considered as separate and distinct from the 6% annual wage increases that it has proposed. The Association acknowledges that 6% is above average in an area where average increases are nearer to 4%, but asserts that the increases it seeks are justifiable and should be applied on top of the coordinated base compensation levels it proposes. Using the data supplied by the Regional, the Association uses the following chart of increases for police employees in the municipalities that comprise the Regional to show that area wage increases average near 4%.

**Police Department Settlements for Towns
Comprising North Hudson Regional Fire and Rescue**

Regional Police Dept.	1998	1999	2000	2001	2002	Average
GUTTENBERG	5	5	5	5	5	
WEST NEW YORK		3	3	3	3	
WEEHAWKEN	3.5	3.5	3.5	3.5		
NORTH BERGEN			3.5	3.5	3.5	
AVERAGES	4.25	3.83	3.75	3.75	3.83	3.88

The Association asserts that police salaries in the communities that comprise the Regional are relevant and have been relied upon by the employer. In addition to these salary increases, the Association points out that the

Weehawken police received improved overtime rights with a higher minimum on recall, improved compensation for police training courses, and improved rights with respect to sick leave verification. Further, the Association notes that the West New York police received improved longevity and the right to arbitrate minor discipline in addition to the base wage increases.

Addressing the lawful authority of the employer, the Association argues that the “Cap Law “ should not applied to this case. According to the Association, the Cap Law refers only to municipalities and counties, and does not refer to a regional entity created among jurisdictions. Again relying upon the testimony of its financial expert, Mr. Foti, the Association asserts that the Cap Law does not apply to a regional entity such as this because it is a “joint meeting”. Acknowledging that the individual municipalities that are the funding sources are subject to the Cap Law, Mr. Foti testified that the agency created by the Joint Meeting, the Regional, is not subject to the Cap Law. Though it asserts that the Cap Law does not apply to the Regional, the Association notes that, in any event, there is little Cap pressure on the municipalities that comprise the Regional. The Association created the following chart to illustrate that the municipalities that comprise the Regional maintain Cap banks and do not have a Cap problem.

CAP BANK COMPARISONS

	Cap % Utilized	Cap Bank Amount
UNION CITY	1.5%	183,851
NORTH BERGEN	3.5%	1,039,179
GUTTENBERG	3.5%	355,159
WEEHAWKEN	5%	427,705
AVERAGE	3.375%	
TOTAL		\$2,005,894

Based upon this chart, the Association maintains that the municipalities do not suffer from cap pressure, and that all cap calculations used were less than 5%, with the exception of Weehawken. The Association notes that in Weehawken, with a 5% Cap calculation, there was an underutilization of the permissible amount by over \$427,000. The Association maintains that the current underutilization and the significant cap bank flexibility demonstrate flexibility into future years. The Association notes that the average Cap percent used, or 3.75%, further illustrates the lack of cap pressure. Although Cap banks can not be transferred from municipality to municipality, the Association cites the total of cap bank flexibility of \$2,005,894 to illustrates the lack of pressure.

Pointing out that one of the purposes of creating the Regional was to provide taxpayers with tax relief, the Association emphasizes that the issue is not the negative impact on the tax payers of increased costs, but the savings to the taxpayers resulting from the creation of the Regional. The Association explains

that the sale of the fire assets of each of the municipalities to the Regional was structured in a \$30 million bond payable over 30 years. The Association details the costs of the bond for fire vehicles to each municipality as follows:

Guttenberg	\$ 341,000
North Bergen	\$1,900,000
Union City	\$2,202,000
Weehawken	\$1,200,000
West New York	\$ 900,000

Relying upon the testimony of its financial expert Mr. Foti, the Association points out that each of the municipalities initially received cash for their fire fighting assets, including fire engines and fire houses with an emphasis on passing on the cost savings to the taxpayers. The Association highlights the emphasis on taxpayer savings by reference to the statement including in the North Bergen 2001 municipal budget

The recent regionalized Fire Department, North Hudson Regional Fire and Rescue, continues to progress as a new entity and does not require any additional budgeted dollars in the upcoming fiscal year. In addition, I am sure qualifying homeowners were pleased to see a reduction in the recent tax bill due to this Regionalization effort. In recognition of North Bergen's leadership, the State of New Jersey awarded \$1,800,000.00 through the Regional Efficiency Aid Program (REAP) in the form of tax credits to homeowners.

The Association also cites the savings resulting from the REAP tax credits discussed by the Mayor of West New York, Albio Sires:

The average homeowner will receive a REAP tax credit of about \$400. You may receive a greater or smaller credit, depending on the assessed value of your home. Your tax bill will show that this tax credit will be deducted from your total property taxes due for the third and fourth quarters of the current year.

You are receiving this tax break because of the Fire Department Regionalization. Last year, West New York and 4 other towns merged their Fire Departments into one efficient new agency: North Hudson Regional Fire and Rescue. We created the first regionalized Fire Department in New Jersey and the largest in America. We improved fire safety and saved millions of tax dollars at the same time. In recognition of West New York's leadership, the State of New Jersey has awarded a township a special 1.4 million tax credit to be distributed to all eligible homeowners. The tax credit you will see on your tax bill is your share of this money.

Noting that the issue is the amount saved by the regionalization rather than its costs, the Association points out that the Regional entity has extremely high credit ratings with a Moody's rating of AAA and a Fitch rating of AAA, and is on solid fiscal ground.

Looking directly at the Regional's funding, the Association points out that \$3 million in REAP funds have been paid directly to the Regional from the State as a form of start-up funding. According to the Association, this funding provides substantial front end flexibility to cover necessary start up costs. Citing audit for the year ending December 31, 1999, the Association notes that even with brief operation, the Regional had unrestricted investments of \$2,203,188.00 and restricted total cash and cash equivalents totaling \$8,681,010. The Association cites the audit's statement regarding deposits:

The carrying amount of the NHRFR cash and cash equivalents at December 31, 1999 was \$8,681,010. The bank balance at December 31, 1999 was \$8,697,127.79. Of the bank balance, \$100,000 was covered by Federal Depository Insurance and the \$8,597,127.79 was covered by the State of New Jersey, Governmental Unit Deposit Protection Act.

Additionally, the Association points out that the audit also reflects that total disbursements for the sale of assets for 1999 were:

Guttenberg	\$ 996,000
North Bergen	\$4,458,000
Weehawken	\$1,642,200
West New York	\$3,369,000
Union City	\$4,613,000

The Association asserts that these funds are substantial sums aimed at tax reduction in the municipalities, and that the impact of regionalization on the taxpayers and residents is positive. Instead of costs, each municipality will experience both short and long term savings, according to the Association. The Association emphasizes that the legislature intended to provide cost efficiency to the communities in the way they deliver municipal fire services. The Association also points out that in March of 2000, legislation providing an abatement of pension costs was enacted providing an additional windfall.

The Association also notes that each of the municipalities composing the Regional have substantial ratable bases with significant tax levies and each reflect a high percentage of current tax collections. The Association points out that the collective tax levy among the municipalities is over \$218,000,000 and the

average tax collection rate is near 96%. The Association used the following chart to illustrate the tax levy and tax collection rates in each of the municipalities that compose the Regional.

**Tax Levy and Percentage of
Collection Rates in Regional Municipalities**

UNION CITY	\$ 55,585,768	98.82%
WEST NEW YORK	40,189,213	97.04%
NORTH BERGEN	83,063,897	95.72%
GUTTENBERG	13,600,958	89.3%
WEEHAWKEN	24,629,335	98.52%
AVERAGE		95.88%
TOTAL	\$218,069,171	

The Association asserts that the statistics detailed on this chart show a strong ratable base and taxpayers that are able to meet their tax obligations in timely fashion, which exemplifies fiscal stability and strength.

The Association asserts that per capita savings have been substantial with pre-merger per capita spending for paid fire service in the four larger towns ranging from \$152.74 in North Bergen to \$346.63 in Weehawken. The Association calculated that under the Regional's budget of \$29,000,000 spread over a combined population of 165,410, the per capita spending for the merged department will be \$175.32.

The Regional urges rejection of the Association's proposals. The Regional begins its discussion of salary proposals by noting the change in title structure for Fire Officers. Additionally, the Regional emphasizes that under the prior agreement in effect until December 1999, Union City Fire Officers received a 5% salary increase. The Regional notes that the other municipal Fire Officers whose contracts only effective through mid-1999 did not receive an increase. Accordingly, the Regional asserts that any salary adjustment made to the salaries of Fire Officers must ensure that Union City Fire Officers do not receive double raises.

The Regional explains that previously, municipalities could have the rank of Lieutenant and/or Captain, with similar duties and responsibilities, but with a salary structure that with differentials for minimums and maximums. According to the Regional, the Association's proposal to address the new titles is too simplistic because it focuses only on the Captain maximum salary, and more narrowly focuses on the highest Captain's salary in one community as a basis for its proposal. The Regional asserts that the Association's approach of focusing on one position and using its highest salary as a basis for creating new salaries is no more sound than beginning at the lowest point of departure. Instead, the Regional urges creation of a new structure that would provide Fire Officers' maximums and proper differentials from that point, in accordance with its proposal. According to the Regional, the new structure would apply to all Fire Officers hired and promoted by Regional. The Regional proposes further that

current employees be “red circled” and proper salary adjustments for each year of the contract would be added. The Regional argues that the Association’s proposal ignores the goal of regionalization and would result in economic change that violates the pattern of settlements and current settlement data. The Regional contends that the Association’s proposals yield cumulative costs in the tens of millions yielding double digit annual percentage increases.

The Regional maintains that three primary basis for granting wage increases: inflation rates; labor market hiring ability and increased productivity each favor its final offer. The Regional asserts that the rate of inflation is likely to continue at historic lows and bargaining unit members are protected from inflation in the cost of medical services, the one area where cost increase are significant.

The Regional points out that it has had no problem recruiting, hiring and retaining high-quality candidates and firefighters. The Regional points to the significant number of applicants on the list from the Department of Personnel, and that candidates quickly accept a job offer. The Regional notes that no firefighters have resigned to seek other employment and it has significant lists of firefighter candidates seeking higher rank. The Regional maintains that even based upon its proposed enhanced work schedule, there would be no basis for salary adjustment because the proposed work schedule enhances a work

schedule of approximately 70 calendar days per year and would provide a very good work schedule for employees.

Turning to the interest and welfare of the public, the Regional emphasizes the public as a silent party to the process and asserts that this criterion favors its proposal. The Regional points out that before the regionalization, the five municipalities spent a combined \$29.5 million to deliver fire and rescue services individually and the per capita spending for paid fire service in the four larger municipalities ranged from \$152.74 in North Bergen to \$346.63 in Weehawken. Reiterating that one of the main reasons for the consolidation of the delivery of fire and rescue services for the five municipalities was save money while improving response time and life and property preservation. The Regional explains that by combining resources, it is now able to provide a faster response and a higher level of manpower, which benefits both the public and the Fire Officers.

The Regional recaps its financial history, explaining that its first budget was a transitional nine month budget from April 1, through December 31, 1999. According to the Regional, it paid \$16,828,850.00 for salaries and equipment out of the \$20,126,223.36 that was appropriated for that year. In 2000, the Regional explains, it paid \$21,531,000.00 for salaries and equipment out of the \$23,977,000.00 that was appropriated for that year. In 2001, the Regional appropriated \$24,773.890.0, of which \$22,297,890.00 is for salaries and

equipment. According to the Regional, its average bi-weekly payroll is approximately \$826,000.

The Regional explained that its annual operating costs are allocated among the five municipalities. The Regional details these costs for 2001, when Union City will contribute approximately \$626,000 a month; North Bergen will contribute approximately \$490,000; West New York will contribute approximately \$477,000 per month; Weehawken will contribute approximately \$277,000 per month; and Guttenberg will contribute approximately \$125,000 every month. According to the Regional, these municipalities have limited resources and cannot afford to pay more. The Regional calculates that with a budget of approximately \$25 million and a population of approximately 165,410, the per capita spending for the Regional would be \$151.14. The Regional asserts that if the Association's proposals are adopted, the cost of providing fire and rescue services would not be cut and instead, would actually lead to an increased burden on the municipalities' taxpayers. The Regional argues that adoption of the Association's proposals for exorbitant salaries, longevity pay, differential pay, increased vacation, and other employee benefits, would increase the cost of providing fire and rescue services which is run counter to the rationale for forming a regionalized fire and rescue service and the taxpayers of the individual municipalities would be left to foot the bill.

The Regional notes that its per capita spending of \$151.14 greatly exceeds the average of \$99.48 per capita in 1997 in the mid-Atlantic states and the 1997 average of \$101.36 per person for American cities with populations between 100,000 and 250,000. The Regional is mindful that the public is ultimately responsible for paying for the Award and the interest and welfare of the public demand the tax burden not be increased.

However, the Regional asserts that the Association's entire proposal would significantly increase the tax burden on the taxpayers in the five municipalities. The Regional maintains that the public should receive increased fire protection and less tax burden and its proposal would meet these needs, while the Association's proposal would increase taxpayers' burdens with higher wage increases. In support, the Regional points out that the wages and benefits included in its proposal are very competitive and would be one of the most lucrative packages received by Fire Officers throughout the United States, and have thus far resulted in high quality fire and rescue services.

Additionally, the Regional contends that Association did not provide evidence that its proposals are needed to retain or recruit qualified Fire Officers. To the contrary, the Regional emphasizes that it was established that it has no trouble recruiting significant numbers of highly qualified applicants for very few openings. According to the Regional, neither it, nor the individual municipalities has ever had a problem in hiring or retaining Fire Officers. Instead, the Regional

maintains that most, if not all of its Fire Officers will remain at the Regional for the duration of their career because the Regional provides favorable employment opportunities, including excellent benefits.

The Regional acknowledges that the public benefits from a quality fire department supported by competitive wages and benefits, but asserts that there is no evidence that the current level of compensation is insufficient to attract and retain quality Fire Officers or that there is a shortage of available applicants. Accordingly, the Regional asserts that Association's proposals would simply increase the taxpayers' burden by demanding higher wage increases, while its proposal is more financially beneficial and will maintain the Fire Officers' competitive standing in the State and nationally.

Turning to a comparison of overall compensation, the Regional argues that the overall proposed compensation received by Regional Fire Officers in terms of salaries, work hours and conditions of employment, is equal to or better than that of Fire Officers in same or similar employment.

Turning to its proposal, the Regional is aware, that the titles of lieutenant and captain have been combined into the title of "Fire Officer 1," but proposes that the 1999 maximum base salary for a lieutenant range between \$54,500 and \$57,500 and for a captain range between \$63,000 and \$66,000. The Regional reiterates that Fire Officers from Union City received a 5% salary increase

through December 1999, in contrast to the other municipal Fire Officers whose contracts expired in mid-1999 and that this difference must be considered to ensure that Union City Fire Officers do not receive double raises. The Regional proposes that 1999 maximum base salary for a battalion chief range between \$71,000 and \$74,000 and for a deputy chief range between \$82,000 and \$85,000. According to the Regional, the rates set forth in the Regional's proposal are not meant to reduce any Fire Officers' base salary compensation currently paid and received under the four individual contracts. Rather, it proposes that the current rate of pay is to be red-circled until the rates provided on the above schedule become equal to or greater than the Fire Officer's current base salary.

The Regional maintains that the maximum base salary proposals compare favorably with base salaries received by Fire Officers in large major cities throughout the United States. For example, the Regional notes that in 1999, New York Lieutenants received an annual base salary of between \$60,239 and \$62,857 and New York Captains received an annual base salary of between \$68,503 and \$72,151. Likewise, In 1999, New York Battalion Chiefs received an annual base salary of between \$78,305 and \$93,948 and its Deputy Chiefs received an annual base salary of between \$86,549 and \$104,132. The Regional also cites Fire Officer salaries in San Deigo noting that its Captains received an annual bases salary of between \$69,792 and \$73,212 and its

Battalion Chiefs received an annual base salary of between \$81,360 and \$85,308 in 2000.

The Regional maintains that its base salary proposals also compare favorably with base salaries received by other Fire Officers throughout the State. According to the Regional, in 1999, North Bergen Lieutenants received an annual base salary between \$56,840 and \$61,665 and West New York Lieutenants received an annual base salary between \$57,026 and \$62,328. In 1998, Union City Lieutenants received an annual base salary of \$64,275. In 1999, Hoboken Lieutenants received an annual base salary between \$62,572 and \$64,807.

The Regional compares Captains' salaries, noting that in 1999, North Bergen Captains received an annual base salary between \$65,632 and \$70,916; Weehawken Captains received an annual base salary of \$69,404; and West New York Captains received an annual base salary between \$67,625 and \$72,924. In comparison, the Regional notes that in 1999 and 2000, Hillsdale Captains received an annual base salary of \$69,394 and in 1999, Hoboken Captains received an annual base salary of between \$64,807 and \$73,746 and in 1999, Newark Captains received an annual base salary of between \$60,014 and \$71,487.

The Regional compares salaries of Battalion Chiefs, noting that in 1999, North Bergen Battalion Chiefs received an annual base salary between \$75,171

and \$81,552; Weehawken Battalion Chiefs received an annual base salary of \$82,829; and West New York Battalion Chiefs received an annual base salary between \$79,123 and \$85,322. In comparison, in 1999, Hoboken Battalion Chiefs received an annual base salary of between \$87,154 and \$89,389, and Newark Battalion Chiefs received an annual base salary of between \$74,261 and \$80,818.

The Regional compares salaries of Battalion Chiefs noting that in 1999, North Bergen Deputy Chiefs received an annual base salary between \$86,447 and \$93,786. In comparison, in 1999 Hillside Deputy Chiefs received an annual base salary between \$78,417 and \$81,142 and Newark Fire Chiefs received an annual base salary of between \$84,285 and \$88,150.

The Regional argues that the Association's salary proposals must be rejected outright because they are clearly in excess of what other comparable Fire Officers receive. Specifically, the Regional contends that the Association's proposal exceeds the highest paid lieutenants and captains throughout the State and the nation. For example, the Regional emphasizes that the Association's maximum base salary proposal for company officer for 1999 exceeds West New York's maximum base salary for Lieutenants by \$15,226 and West New York's maximum base salary for Captains by \$4,630. Additionally, the Regional highlights the difference between the Association's maximum base salary proposal for company officer for 1999 and that provided in North Bergen before

the regionalization. According to the Regional, the Association's proposal exceeds North Bergen's maximum base salary for lieutenants by \$15,889 and North Bergen's maximum base salary for captains by \$6,638. Additionally, the Regional calculates that the Association's maximum base salary proposal for company officer for 1999 exceeds Union City's maximum base salary for Lieutenants by \$10,069 and the Association's maximum base salary proposal for company officer for 1999 exceeds Weehawken's maximum base salary for Captains by \$8,150.

The Regional calculates that the Association's maximum base salary proposal for company officer for 1999 exceeds Hoboken's maximum base salary for Lieutenants by \$12,747 for captains by \$3,808. The Regional calculates that the Association maximum base salary proposal for company officer for 1999 exceeds Hillside's maximum base salary for Captains by \$8,160 and Newark's maximum base salary for Captains by \$6,067.

Additionally, the Regional asserts that the Association's proposal for Battalion Chief salary exceeds the highest paid Battalion Chiefs in the State and the country. For example, the Regional calculates that the Association's maximum base salary proposal for Battalion Chief for 1999 exceeds West New York's maximum base salary for Battalion Chiefs by \$1,866 and exceeds North Bergen's maximum base salary for Battalion Chiefs by \$5,636. The Regional calculates further that the Association's maximum base salary proposal for

Battalion Chiefs for 1999 exceeds Weehawken's maximum base salary for Battalion Chiefs by \$4,359.

Comparing the Association's proposal for Battalion Chiefs to salaries throughout New Jersey, the Regional calculates that the Association's proposed maximum base salary proposal for Battalion Chiefs for 1999 exceeds Newark's maximum base salary for Battalion Chiefs by \$6,370. Comparing the Association's proposal for Battalion Chiefs to salaries nationally, the Regional calculates that the Association's proposed maximum base salary proposal for Battalion Chiefs exceeds San Diego's 2000 maximum base salary for Battalion Chief's by \$1,880.

Following the same analysis, the Regional asserts that the Association's proposal for Deputy Chiefs exceeds the highest paid Deputy Chiefs throughout the State and the United States. For example, the Regional calculates that the Association's maximum base salary proposal for Deputy Chief for 1999 exceeds North Bergen's maximum base salary for Deputy Chiefs by \$6,040 and exceeds Union City's maximum base salary for Deputy Chiefs by \$3,005. The Regional calculates that the Association's maximum base salary proposal for Deputy Chiefs for 1999 exceeds Hillside's maximum base salary for Battalion Chiefs by \$18,684 and exceeds Newark's maximum base salary for Deputy Chiefs by \$11,676.

The Regional emphasizes that its proposed salary guide for Fire Officers would compare favorably with salaries received by other occupations. Noting that in 1998, New Jersey had a per capita personal income (PCPI) of \$34,383, the Regional points out that the State's PCPI ranked third in the United States and was one hundred twenty six percent (126%) of the national average of \$27,203. Accordingly, the Regional concludes that a Fire Officer receiving compensation at the Regional's proposed rates would clearly exceed New Jersey's PCPI. Specifically, the Regional maintains that a captain with ten years of service would receive \$67,750 in base and longevity pay. Accordingly to the Regional, this amount, which not include holiday pay, paid leave time, education incentive, and insurance, among other lucrative benefits, would exceed New Jersey's PCPI by \$33,367 and would exceed the national average by \$49,547.

Likewise, the Regional explains that a battalion chief with ten years of service would receive \$75,750 in base and longevity pay and that amount, which not include holiday pay, paid leave time, education incentive, and insurance, among other lucrative benefits, would exceed New Jersey's PCPI by \$42,383 and would exceed the national average by \$48,547. Continuing its analysis, the Regional calculates that a deputy chief with ten years of service would receive \$86,750 in base and longevity pay, which not including holiday pay, paid leave time, education incentive, and insurance, among other lucrative benefits, would exceed New Jersey's PCPI by \$53,383 and would exceed the national average by \$59,547.

Comparing occupational average wages in Northern New Jersey to the salaries of its Fire Officers, the Regional uses a Captain's receiving a salary at the Regional's proposed 1999 maximum base salary rates with maximum longevity benefits would earn \$71,000, not including holiday pay, paid leave time, education incentive, and insurance, among other lucrative benefits. According to the Regional, this Captain would earn more than education administrators (\$70,014), marketing research executives (\$65,630), the Bergen County Surrogate (\$64,375), data base administrators (\$59,158), computer system analysts (\$57,145), accountants (\$55,328), and computer programmers (\$53,768), among other professions. Continuing the comparison, the Regional concludes that its Battalion Chiefs receiving a maximum base salary and maximum longevity at the Regional's proposed 1999 rates would earn \$79,000, not including holiday pay, paid leave time, education incentive, and insurance, among other lucrative benefits. According to the Regional, this Battalion Chief would earn more than a Bergen and Passaic County attorney (\$78,572), Commander of the New Jersey State Police, Troop B (\$76,861), physician employed by the New Jersey State Police (\$72,821), and engineer (\$72,644), among numerous other occupations. Likewise, Deputy Chiefs employed by the Regional receiving a maximum base salary and maximum longevity at the Regional's proposed 1999 rates would earn \$90,000, not including holiday pay, paid leave time, education incentive, and insurance, among other lucrative benefits. According to the Regional, this Deputy Chief would earn more the

Superintendent of the New Jersey Department of Law and Public Safety, Division of the State Police (\$89,963), commercial airplane pilots (\$87,861), Assistant Public Defenders employed by the State of New Jersey (\$87,856), the Bergen County Administrator (\$87,326), the Bergen County Sheriff (\$84,528), the Administrator of the New Jersey State Prison (\$83,805), the Executive Director of the State of New Jersey, Department of Corrections, Parole Board (\$81,949), the Bergen County Public Works Director (\$80,324), the Bergen County Counsel (\$80,323), and Administrative Law Judges (\$80,000), among numerous other occupations.

The Regional compares salaries proposed by the Association and concludes that under the Association's proposal, Regional's Fire Officers would be the highest paid employees in the State of New Jersey. For instance, the Regional compares a "Fire Officer 1" receiving a maximum base salary and maximum longevity at the Association's proposed 1999 rates would earn \$93,840, not including holiday pay, paid leave time, education incentive, and insurance, among other lucrative benefits. According to the Regional, this "Fire Officer 1" would earn more than the Assistant Attorney General for the State of New Jersey, Department of Law and Public Safety (\$93,072), the Assistant Secretary of State (\$90,000), Administrative Law Judges (\$90,000), the Superintendent of the New Jersey Department of Law and Public Safety, Division of the State Police (\$89,963), commercial airplane pilots (\$87,861), Assistant Public Defenders employed by the State of New Jersey (\$87,856), the Bergen

County Administrator (\$87,326), the Bergen County Sheriff (\$84,528), and the Administrator of the New Jersey State Prison (\$83,805), among numerous other occupations. The Regional compares the \$105,497 in maximum base salary and maximum longevity at the Association's proposed 1999 rates that a Battalion Chief would earn to other positions. According to the Regional, this Battalion Chief would earn more than the Bergen County Executive (\$100,640), the Commissioner of Education of the State of New Jersey (\$100,225), the Commissioner of Corrections for the State of New Jersey (\$100,225), the Secretary of State (\$100,225), securities traders (\$97,702), the First Assistant Attorney General for the State of New Jersey, Department of Law and Public Safety (\$97,500), the Director of the State of New Jersey Division of Criminal Justice (\$95,000), Public Defender (\$95,000), Director/Chief Administrative Law Judge (\$95,000), and the Executive Assistant Attorney General (\$94,688), among numerous other occupations. Likewise, the Regional compares the proposed 1999 maximum base salary plus longevity for a Deputy Chief to salaries earned by the Bergen County Prosecutor (\$115,000), financial planners (\$108,008), the President of Jersey City State College (\$107,000), and the Bergen County Executive (\$100,640), among numerous other occupations.

The Regional also emphasizes that all Fire Officers not assigned to staff duty, work a 24 hour shift. The Regional points out that under this schedule, a Fire Officer is normally assigned to work one (1) 24-hour day and then has three (3) full days, or 72 hours off. In other words, the Regional emphasizes that a Fire

Officer assigned to line duty is scheduled for approximately 91 days per year, less vacation, and other leave time. According to the Regional, not considering overtime and emergencies, the average Fire Officer, after vacation, is actually scheduled to work less than 80 days per year, less sick leave days and other paid leave, such as convention leave. Therefore, the Regional concludes that a Fire Officer might only work between 60 and 70 days per year.

The Regional calculates that if a Fire Officer reports to duty for 60 tours per year, under the Association proposal, he would be paid over \$1500 per tour. The Regional calculates further that if that same "Fire Officer 1" reports to duty for seventy tours, he would be paid over \$1,340 per tour. Likewise, the Regional calculates that a Battalion Chief who reports to duty for sixty tours per year would be paid over \$1,750 per tour. The Regional calculates further that if that same Battalion Chief reports to duty for seventy tours, he would be paid over \$1,500 per tour. Continuing this analysis, the Regional calculates that a Deputy Chief who reports to duty for 60 tours per year annum would be paid over \$2,010 per tour. The Regional calculates further that if that same Deputy Chief reports to duty for 70 tours, he would be paid over \$1,725.00 per tour.

Accordingly, the Regional concludes that under the Association's proposal, all Fire Officers would receive more money per actual work day than a United States Third Circuit Court of Appeals Judge (\$141,700 annual salary), a United States District Court Judge (\$133,600 annual salary), and the Bergen

County Prosecutor (\$115,000 annual salary) among many other occupations. Therefore, the Regional urges adoption of its proposed salary structure because comparison of its proposed salary structure with other occupations in New Jersey demonstrates that its Fire Officers would be very well compensated for their services.

Turning to annual increases, the Regional asserts that total economic changes must be comparable recent police and fire settlements and interest arbitration awards. The Regional highlights interest arbitration awards it deems comparable including the City of Atlantic City and PBA Local 24, where Arbitrator Martin F. Scheinman awarded no increase in 1996 and 1997 followed by 4.0% effective January 1, 1998, 5.0% effective January 1, 1999, 3.6% effective January 1, 2000, 3.5% effective January 1, 2001 and 3.4% effective January 1, 2002. The Regional also cites the award between the Township of Hillside and Township of Hillside Superior Officers Association where Arbitrator Daniel F. Brent awarded 2.9% effective July 1, 1996, 3.0% effective July 1, 1997, 3.5% effective July 1, 1998, and 3.7% effective July 1, 1999. The Regional also cites the award between the City/Orange Township and Fire Officers Assn. FMBA Local 210, where Arbitrator Joel M. Weisblatt awarded 5.5% effective January 1, 1996, 3.0% effective January 1, 1998, 2.5% effective January 1, 1999, and 3.7% effective January 1, 2000.

The Regional observes that the Association's salary proposals exceed salaries received by Fire Officers throughout the State and the country, while its proposed salaries are more consistent with those salaries received by Fire Officers locally and nationally. The Regional asserts that any annual base salary increase must be consistent with other settlements and interest arbitration awards and opinions. According to the Regional, the contracts between Atlantic City and its police and firefighters each averaged 2.79% per year, the contract between Hillside and its superior officers averaged 3.28% per year, the contract between Orange and its Fire Officers averaged 2.94% during the course of the agreement, and the contract between Trenton and its firefighters averaged 3.23% during the course of the contract.

Turning to voluntary settlements, the Regional cites a settlement between the City of Atlantic City and IAFF, Local 198 for the period January 1, 1996 through December 31, 1998 and January 1, 1999 through December 31, 2002 that included no increases in 1996 and 1997 followed by 4% in 1998, 5% in 1999, 3.6% in 2000, 3.5% in 2001 and 3.4% in 2002. The Regional also cites a voluntary agreement between the City of Trenton and FMBA, Local 6 for the period of July 1, 1997 through June 30, 2000 and July 1, 2000 and December 31, 2005. There, the parties agreed on increases of 4.0% effective July 1, 1997, 3.8% effective July 1, 1998, 4.0% effective July 1, 1999, 0.5% effective July 1, 2000, 3.0% effective January 1, 2001, 3.5% effective January 1, 2002, 3.5%

effective January 1, 2003, 3.5% effective January 1, 2004, and 3.5% effective January 1, 2005.

Looking at the municipalities whose fire departments have been regionalized, the Regional asserts that the Association's salary proposals exceed salary increases negotiated between the five municipalities and their respective Firefighters and Fire Officers and their respective police officers and superiors. The Regional maintains that each municipality has a pattern of settlement and that the Association seeks increases well in excess of these settlements. Specifically, the Regional points out that North Bergen and IAFF, Local 1387 entered into a voluntary agreement to increase salaries by 1.75%, effective January 1, 1999. The Regional notes that the North Bergen police agreement for the period from January 1, 2000 through December 31, 2003 provides wage increases of 3.5% effective January 1 of each year of the agreement.

Turning to Weehawken, the Regional points out that FMBA Local 26 entered into a voluntary agreement on December 22, 1998 that provided a 2.5% increase effective July 1, 1998 1.5% increase effective January 1, 1999. For the period from July 1, 1998 through June 30, 2002, Weehawken and its police entered into a settlement providing increases of 3.5% effective July 1 of each year.

In West New York, IAFF Local 1861 entered into a voluntary settlement on October 19, 1998 that provided a 0% increase effective July 1, 1997, a 3% increase effective January 1, 1998, and a 3.25% increase effective July 1, 1998. The West New York police agreement for the period of July 1, 1998 through June 30, 2002 provides a 3% wage increase on June 30, 1999, June 30, 2000, June 30, 2001 and June 30, 2002. The Regional notes that the agreement between West New York and its Police Supervisors for the period from June 30, 2001 through June 30, 2004 provides increases of 3.0% effective June 30, 2001, 3.0% effective June 30, 2002, 3.5% effective June 30, 2003, and 3.75% effective June 30, 2004.

The Regional concludes that if the individual municipalities had continued to provide fire service without regionalization, the increases provided to Firefighters and Fire Officers would be similar to those provided to police employees in these agreements. In support of this conclusion, the Regional cites Sanzari's testimony that while negotiating a new collective bargaining agreement, one of the goals and objectives of the West New York Fire Officers was to achieve the same results as was achieved by the Police Superiors.

Turning to the lawful authority of the employer, the Regional acknowledges that its budget is not subject to the Cap Law, but emphasizes that the budgets of the five municipalities are constrained by its dictates. The Regional observes that since its inception, the participating municipalities have

designated in their municipal budgets, and have contributed their share of the costs for providing fire and rescue services. During the nine (9) months that the Regional was operational in 1999, North Bergen paid \$4,412,169 to the Regional; Union City paid \$5,633,100 to the Regional; Weehawken paid \$2,497,428 to Regional; West New York paid \$4,297,653 to the Regional; and Guttenberg paid \$1,375,000 to the Regional. In 2000, North Bergen paid \$5,588,747 to the Regional; Union City paid \$7,135,260 to the Regional; Weehawken paid \$3,163,409 to Regional; West New York paid \$5,443,694 to the Regional; and Guttenberg paid \$1,500,000 to the Regional. For 2001, North Bergen will pay \$5,882,892 to the Regional; Union City will pay \$7,510,800 to the Regional; Weehawken will pay \$3,329,904 to Regional; West New York will pay \$5,730,204 to the Regional; and Guttenberg will pay \$1,500,000 to the Regional.

Looking at the municipalities whose fire departments have been regionalized, the Regional asserts that the Association's salary proposals exceed salary increases negotiated between the five municipalities and their respective Firefighters and Fire Officers and their respective police officers and superiors. The Regional maintains that each municipality has a pattern of settlement and that the Association seeks increases well in excess of these settlements. Specifically, the Regional points out that North Bergen and IAFF, Local 1387 entered into a voluntary agreement to increase salaries by 1.75%, effective January 1, 1999. The Regional notes that the North Bergen police agreement for

the period from January 1, 2000 through December 31, 2003 provides wage increases of 3.5% effective January 1 of each year of the agreement.

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Firefighters and Fire Officers would be similar to those provided to police employees in these agreements. In support of this conclusion, the Regional cites Sanzari's testimony that while negotiating a new collective bargaining agreement, one of the goals and objectives of the West New York Fire Officers was to achieve the same results as was achieved by the Police Superiors.

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The Regional also examines each of the individual municipalities appropriations to the Regional in their municipal budgets for Fiscal Year 2000. In

2000, North Bergen appropriated \$38,648,803.00 for items covered under the CAP law and for Fiscal Year 2001, the Township could raise its appropriations by 3.5%, or by \$1,352,708.11. For Fiscal Year 2000, Weehawken appropriated \$14,029,412.00 for items covered under the CAP law and for Fiscal Year 2001, the Township could raise its appropriations by 3.5%, or by \$701,470.60. For Fiscal Year 2000, Guttenberg appropriated \$4,736,270.00 for items covered under the CAP law and for Fiscal Year 2001, the Township could raise its appropriations by 3.5%, or by \$165,769.45. For Fiscal Year 1999, Union City appropriated \$50,796,715.03 for items covered under the CAP law and for Fiscal Year 2000, the City could raise its appropriations by 3.0%, or by \$1,523,901.00.

The Regional asserts that if the Association's contractual proposals were implemented, the Regional would have to come up with an insurmountable sum of money for base salary increases, without considering the cost of implementing the Association's other proposals such as service differential, longevity pay, and holiday pay. The Regional also points out that the Association's proposals do not take into account the cost of overtime. The Regional emphasizes that in 1999, it paid approximately \$900,000 in overtime and in 2000, overtime costs almost tripled, to a total cost of approximately \$2,400,000. The Regional also notes that its calculations do not include the cost of implementing the Association's proposals in the companion firefighter case.

The Regional points out that in addition to providing its funding, the participating municipalities have various other expenses for general government, within the Cap Law, including such items as the office of mayor and council, clerk's office, attorney, prosecutor, director of finance, tax assessor, public safety, police department, fire inspector, department of public works, vehicle maintenance, division of health traffic control, recreation, planning board, and insurance. Accordingly, the Regional maintains that the individual municipalities are unable to lawfully increase their budgets to accommodate the cost of implementing the Regional's proposal.

The Regional asserts that the Association's proposals are basically a compilation of the highest level of benefits from each of the Fire Officer contracts and no other Fire Officers receive salaries and benefits remotely similar to the Association's proposals. According to the Regional, it can not afford to fund salaries and benefits at the levels proposed by the Association, and the burden of funding an Award at those levels would rest with individual municipalities, and ultimately the tax payers.

The Regional illustrates the excessive cost of implementing the Association's proposals, using the following example: A 10 year Lieutenant from Union City received a base salary of \$67,489 in 1999, plus \$6,749 in longevity pay, and \$4283 in holiday pay. Thus, this Fire Officer received \$78,521 in salary for 1999. The Regional calculates that under the Association's proposals, this

Lieutenant would receive a base salary of \$77,554 plus \$7,755 in longevity pay and \$6,152 in holiday pay, for a total of \$91,461. According to the Regional, the Association's proposals would increase this Fire Officer's salary for 1999 by approximately \$13,900, exclusive of educational incentive, health insurance, and other benefits.

Following the same analysis, the Regional concludes that the cost of the Association's proposals for 1999 for a 20 year Lieutenant from Union City would increase by approximately \$13,765, exclusive of educational incentive, health insurance, and other benefits. The Regional provides similar examples for captains from Union City, as well as for Lieutenants, Captains, Battalion Chiefs and Deputy Chiefs from each of the municipalities that compose the Regional.

The Regional also reviews its State funding, acknowledging that in 2000, it received \$396,625.00 from the State. However, the Regional emphasizes that for the year 2001, it will not receive any State aid and its first semi-annual payment under the Series 1999A Lease Revenue Bonds is due on September 1, 2001, which amounts to \$187,910.63. Additionally, the Regional notes that its first semi-annual payment under the Series 1999B Lease Revenue Bonds is also due on September 1, 2001, which amounts to an additional \$579,044.75.

The Regional cites Arbitrator Brent's interest arbitration award covering the Town of West New York and Local 361. In that case, the Regional highlights

Arbitrator Brent's conclusion that the financial impact on the Town of above-average, across-the-board wage increases could not be justified in light of the fact that the cost of living had remained stable, and that the current wage and benefit package provided continuity and stability of employment. The Regional also discusses the arbitrator's finding that since the Town was in the middle of the salary range in Hudson County, there was no reason to bestow a large award which it could not afford. Accordingly, the Regional cites with approval the arbitrator's award of a wage freeze followed by modest increases, along with give backs and reduction in vacation time and an increase in prescription co-pay. The Regional emphasizes that West New York had to raise taxes simply to close its budget and to maintain spending at its current levels. The Regional notes that the arbitrator gave great weight to the financial condition of the Town when fashioning that award as follows:

The interests and welfare of the taxpayers of West New York mandate that their already heavy tax burden not be unduly increased. Bargaining unit Police Officers are entitled to fair compensation in comparison to police Officers in other jurisdictions...but it is inappropriate materially to augment their package of compensation at a time when the Town is struggling to recover from the adverse impact of a declining tax base and is burdened by one of the highest tax rates in the area.

Citing the New Jersey Supreme Court's decision in Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), that the financial impact criterion does not equate with the municipality's ability to pay, the Regional asserts that the municipality is not required to prove a substantial financial detriment. The

Regional also contends that in Hillsdale, the Supreme Court found that the burden had been improperly placed on the employer to prove that it could *not* pay the demanded wage increases and that the analysis under the financial impact criterion requires more than a determination that the municipality can pay the wages or a determination of whether or not the Town can raise the money.

The Regional contends that the financial impact criterion requires consideration of the governing body's ability to maintain existing local programs and services, and to initiate new programs and services. The Regional asserts that under its proposed contract, its Fire Officers would be one of the highest compensated fire fighting units in the United States. The Regional maintains that outrageously high wages and benefits, which are the basis of the Association's proposal, are not supported by any of the statutory criteria. The Regional contends that the Association failed to provide any credible evidence to support its proposals and instead its witnesses testified as to how the participating municipalities compensated their Fire Officers before regionalization. The Regional asserts that the record demonstrates that the Association's proposals are composed of those provisions from the predecessor agreements with the greatest economic benefit for the Fire Officers, without taking into consideration the average salaries of other municipal Fire Officers or the impact its unrealistic contractual demands would have on the Regional, the participating municipalities, and the taxpayers. Additionally, the Regional contends that the

Association also failed to consider the firefighters' contractual demands, which have been enunciated in the companion case.

The Regional emphasizes that it does not have the ability to raise revenue by taxing residents of the participating municipalities and its revenue is based solely upon contributions from those participating municipalities. The Regional reiterates that these municipalities have limited revenues and must appropriate money for the operation of its government, insurance, public safety, public works, health and welfare, recreation and education, construction, and utilities, as well as the Regional Fire Department. The Regional also notes that the individual municipalities must pay for the enhanced pension opportunities for the Fire Officers and Firefighters who retired when the Regional was formed. Noting that the total present value of the retirements is approximately \$14,000,000, the Regional points out that the municipalities have the option to choose between various payment options, but they options include significant interest payments. According to the Regional, under the five-year option, the municipalities would be liable for approximately \$4,000,000 a year, under the ten-year option, the municipalities would be liable for approximately \$2,500,000 a year, and under the fifteen-year option, the municipalities would be liable for approximately \$1,900,000 a year.

Furthermore, the Regional points out that the individual municipalities are obligated to make payments on the Lease Revenue Bonds. According to the

Regional, during 2001, payments made under these bond issues will total \$1,533,916.76, and the last payment under the bond issues is due March 1, 2024.

The Regional argues that the Association's proposal affects the Regional's ability to provide fire and rescue services and would require that the participating municipalities contribute more money, which, in turn, would negatively impact the citizens and taxpayers of the participating municipalities. For example, the Regional examines Union City, which the State to be a distressed city in need of financial aid. According to the Regional, Union City is also faced with severe budget deficits and all of these anticipated costs will significantly affect the City's ability to pay. The Regional asserts that the City cannot afford large across-the board wage increases because it does not have the unreserved funds to support a large increase for the cost of fire and rescue services.

The Regional contends that residents of the participating municipalities are also challenged financially. According to the Regional, the per capita income for Union City residents is \$11,089, the per capita income for West New York residents is \$12,047, the per capita income for North Bergen residents is \$15,744, and the per capita income for Weehawken residents is \$17,363. The Regional asserts that these residents are already paying high taxes, cannot afford to pay higher taxes, and do not want to pay higher taxes. The Regional maintains that the Regionalization Statute was not designed to increase

Fire/Police personnel salaries or to mandate any form of enhanced benefits through the interlocking of several towns into one entity, where before each town had its own unique salary and benefits program.

The Regional argues that the financial impact on it, its residents, and taxpayers would be too great if the Association's proposals are awarded and an award of its proposal would reflect a fair salary for its Fire Officers. The Regional asserts that its proposal a reasonable salary increase over the course of the contract would not place an undue burden on the Regional, its residents, and taxpayers and would continue to keep the salaries of Regional Fire Officers more than competitive with other firefighters throughout the State and the country.

Turning to the cost of living criterion, the Regional asserts that all the evidence before the Arbitrator reflects that the cost of living has continued on an extremely restricted rate of increase for over a decade. The Regional contends that both inflation and the cost of living are at historic lows, and there are no indications that this trend will change. The Regional contrasts the 5% salary increases sought by the Association with the increases in the CPI-U, which rose only 1.6% in 1998 and 1.7% in 1999.

The Regional asserts that an arbitrator must consider evidence on the cost of living, even when it has remained at historic and stable lows. The Regional maintains that the cost of living is a serious factor and it does not justify

high wage increases. The Regional notes that its Fire Officers are insulated from increase in the cost of medical care, which is one of the major components of cost of living increases. The Regional reiterates that under its proposal, Fire Officers would have full health benefits, including eye and dental, continued through the life of the contract. Given these benefits, the Regional asserts that the cost of living increases in the relevant period compel modest wage increases.

The Regional asserts that the substantial credible evidence in the record supports its proposed overall compensation of its Fire Officers. The Regional maintains that its level of benefits and salary, has been, and will remain, an inducement to remain in its long-term employ. According to the Regional, its proposed salaries and benefits are very comparable to other similar fire departments throughout the State and the nation. The Regional reiterates that under its proposal, no current Fire Officers' base salary would be reduced, but would be red-circled until the rates provided on the proposed schedule become equal to or greater than the firefighters' current base salary. The Regional also notes that its proposal would permit for a maximum longevity payment in the amount of \$5,000 per year, as well as 120 hours of sick time, up to nine 24 hour tours off for vacation for line Fire Officers and up to 27 eight hour shifts off for vacation for staff Fire Officers, a generous clothing and maintenance allowance, monetary educational incentives and full major medical and dental benefits. According to the Regional, employees in the private sector do not receive all of these benefits. The Regional asserts that the average number of paid holidays

on the private sector is 7.6, the average number of paid sick days after one year of service is 8 days and 69% of private sector employees contribute to the cost of their health benefits. The Regional emphasizes that its Fire Officers would receive all these benefits as well as job stability. The Regional asserts that these benefits enhance the continuity and stability of their employment. Furthermore, the Regional notes that no Fire Officer was laid off even though New Jersey had a 5.4% unemployment rate in 1997 and 245,800 people in New Jersey were unemployed as of July 1997. The Regional also compares the stability of employment for Fire Officers with 6.4 million workers who are unemployed nationally. The Regional cites 1,113 mass layoffs, totaling 110,267 people laid off in June 1997 alone. Likewise, the Regional cites 799 mass layoffs totaling 84,719 workers laid off in March of 1999. In contrast, the Regional points out that its Fire Officers have not faced the possibilities of layoffs or any effect of downsizing. The Regional also points out that its Fire Officers have not had to contribute to their medical benefits at a time when there are 43.4 million people without health insurance in the United States.

At the time of regionalization, Fire Officers were subject to salary terms negotiated by each municipality. There were labor agreements which extended through regionalization and labor agreements which had expired prior to regionalization. Those which had expired resulted in memoranda of agreement providing salary increases to bridge the time between expiration and regionalization.

In North Bergen, the labor agreement expired on December 31, 1998 and a memorandum of agreement was reached providing for a salary increase of 1.75% effective January 1, 1999 and an extension of the agreement through June 30, 1999.

In Weehawken, the labor agreement expired on June 30, 1998 and a memorandum of agreement was reached on December 22, 1998 providing salary increases of 2.5% effective July 1, 1998 and 1.5% on January 1, 1999.

In Union City, the labor agreement expired on December 31, 1999. That agreement provided for four salary increases in each of the four years of the agreement with a last adjustment of 5.0% on April 1, 1999.

In West New York, the labor agreement had effective dates of July 1, 1994 through June 30, 1997. That agreement provided for four salary increases. However, the effective dates of those salary increases were not on an annual basis. The first salary increase was on October 1, 1995, 15 months after the effective date of the agreement and the fourth and last salary increase occurred on the last date of the Agreement, June 30, 1997. Thereafter, the Fire Officers received two additional increases prior to regionalization at rates of 3% and 3.25% effective on January 1, 1998 and July 1, 1998 respectively.

At the time of regionalization, these prior agreements and prior memos provided Fire Officer salaries at the various ranks at the following levels.

	North Bergen	West New York³	Weehawken	Union City
Lieutenant	61,665	62,328	65,000 ⁴	67,489
Captain	70,916	72,924	71,393	77,554
Battalion Chief	81,552	85,322	83,479	87,188
Deputy Chief	93,786	99,826	93,496 ⁵	96,821

In fashioning a new salary structure for the Regional, the achievement of a merger or unification of salaries during this contract term is a goal in harmony with the needs of a unified command structure and consistent with the unification of salaries awarded to firefighters. Another factor supporting this conclusion is the Department of Personnel's decision which altered the rank structure for the Regional's Fire Officers. The old structure of Lieutenant, Captain, Battalion Chief and Deputy Chief has been altered into the rank structures of Fire Officer 1, Fire Officer 2 and Fire Officer 3. This was accomplished when the DOP combined the Lieutenant and Captain rank into the single rank of Fire Officer 1.

As previously noted, the DOP found:

The duties and responsibilities associated with the functions of "Company Officers", serving as first-line supervisors of a group of Firefighters assigned to an engine or truck company, have been

³ The West New York salary schedules reflect three steps including maximum. Only the maximum step appears here.

⁴ The rank of Lieutenant was not contained in the prior Weehawken agreements and the Association has filed an unfair labor practice alleging that the Regional could not unilaterally add this rank to its old agreement after regionalization. For the purpose of this decision, I will assume, but not decide, its legitimacy.

⁵ The rank of Deputy Chief was not included in the prior Weehawken agreements but appears to have been added to the Fire Officers bargaining unit after the Weehawken firefighters and Fire Officers were split into separate units after regionalization.

classified under the title of Fire Officer 1. Employees found to be performing these duties, who previously held permanent Merit System status in the titles of Fire Lieutenant or Fire Captain will be granted a lateral title change to Fire Officer 1 in accordance with the provisions of Merit System rule NJAC 4A:4-7.6. Under this rule, the affected employees will hold permanent status in the title of Fire Officer 1 and will be granted the same Merit System seniority in the title of Fire Officer 1 as they held in the title of Fire Lieutenant or Fire Captain.

As a natural consequence of the DOP ruling, there is a basis to merge or unify the salaries for Fire Officers who previously held the ranks of Lieutenant and Captain. That unification should be achieved during the term of this agreement. The Regional correctly notes that there are considerable costs associated with achieving this goal. But there is simply no logic supporting disparity in salaries for Fire Officers who, by order of the DOP, occupy the same rank and uniformly serve as first-line supervisors of a group of Firefighters assigned to an engine or truck company.

In assessing the merits of the salary proposals advanced by each party I make these observations. The financial impact of salary unification for Fire Officers who previously served in different departments and for those Fire Officers who previously served as Lieutenants and Captains but now serve in the unified title of Fire Officer 1 would be unduly burdensome to the Regional and to the taxpayers in the municipalities in the manner proposed by the Association. While I am persuaded that unification of salaries is compatible with regionalization, excessive costs would be caused if unification were to occur at the beginning of this five year agreement. But I also find that the salary scheme

proposed by the Regional would seriously disrupt the longstanding comparison of its Fire Officers with those in neighboring communities and would represent an undue burden on the Fire Officers because they would receive little or no increases in pay during the five year agreement. The Regional's proposal also fails to properly address the unification of ranks and salaries for all Fire Officers as well as the merger of Lieutenants and Captains into the single rank of Fire Officer 1.

For the Fire Officer 1 title, I conclude that unification be achieved by a gradual integration of Lieutenant and Captain salaries during the course of the agreement. This will substantially offset cumulative costs of merging into the Fire Officer 1 title. Similar reasoning compels that unification among municipalities occur towards the end of the contract and that unification of the prior departments by rank be achieved by a single adjustment towards the end of the agreement and more specifically, on April 1, 2004.

I adopt the following formulae towards providing across-the-board increases coupled with achieving the goal of unification of Fire Officer salaries by the end of this five year agreement. Each Fire Officer in each municipality except Union City (excluding Lieutenants previously employed by the municipalities) shall receive an annual 3% salary increase effective July 1, 1999 through the last year of the agreement effective July 1, 2003. Fire Officers from Union City shall also receive the same 3% annual rate increases but the effective date of the first adjustment shall be January 1, 2000 because their prior salary increase was

effective through ,contract expiration December 31, 1999. On April 1, 2004, each Fire Officer (excluding Fire Officers previously employed as Lieutenants⁶) shall then move to the highest salary held by the Fire Officer in the relevant rank regardless of municipality as reflected in the salary schedule effective July 1, 2003⁷. Thus, the merger or unification of salary by rank (other than the rank of Lieutenant) will occur, at once, nine months into the last year of the five year agreement.

Those Fire Officers, previously serving in the rank of Lieutenant (who are now, as are Captains, in the rank of Fire Officer 1), will unify into a three step salary schedule with those Fire Officers previously serving in the rank of Captain in their separate municipalities on an even and gradual basis by April 1, 2004. Phase in is necessary for Lieutenants because the salary gap between this rank and Captain coupled with the disparities among municipalities yields a far greater gap to overcome. First, the salaries of all of the Lieutenants previously employed by North Bergen, West New York and Weehawken will, by January 1, 2004, be gradually unified at the level of the Union City Lieutenants. Then, the Lieutenants' and Captains' salaries will be unified onto a single three step guide for Fire Officer 1 effective April 1, 2004. By this method, the gap between salaries in these two prior ranks who have previously merged into the rank of Fire Officer 1 will be gradually closed and placed on a single salary scale by April 1,

⁶ As noted below, I have set a three step salary schedule for each rank and Lieutenants will, on April 1, 2004, move to the first step of the unified Fire Officer 1 salary schedule.

⁷ By way of example, the West New York agreement had the highest salary level for the rank of Deputy Chief (now Fire Officer 3) while Union City had the highest salary level for the rank of Battalion Chief (now Fire Officer 2) and Lieutenant/Captain (now Fire Officer 1).

2004. All Fire Officers previously holding the rank of Lieutenant will be placed on the first step of the three step salary schedule for FO1 and movement on that schedule will be after one full year of service on this schedule.

Additionally, effective April 1, 2004 a three-step guide shall be established for all Fire Officers on April 1, 2004. All current Deputy Chiefs shall be placed at the top step of the Fire Officer 3 guide. All current Battalion Chiefs shall be placed at the top step of the Fire Officer 2 guide. All current Captains shall be placed at the top step of the Fire Officer 1 salary guide. As previously noted, all Lieutenants shall be placed on the first step of the Fire Officer 1 salary guide. All Fire Officers promoted on or after April 1, 2004 shall be placed on Step 1 of the guide for the position to which they are promoted and shall progress to the next step after one year in service at each step.

Application of the formula of merger for Lieutenants who have assumed the Fire Officer 1 job title will also necessitate that each annual raise from July 1, 1999 through July 1, 2003 be split into equal bi-annual raises, one on July 1 and the other on January 1. Because of the significant movement required by adherence to the DOP ruling and unification of departmental salaries, this will also serve the purpose of easing the net economic costs associated with their equalization into the Fire Officer 1 job title.

As a result of the above, the salary schedules for Fire Officers for the duration of this agreement shall read as follows:

NORTH BERGEN

OLD RANK	NEW RANK	7/1/99	1/1/00	7/1/00	1/1/01	7/1/01	1/1/02	7/1/02	1/1/03	7/1/03	1/1/04	4/1/04
Lt	FO1	63,322	64,979	66,636	68,293	69,950	71,607	73,264	74,921	76,578	78,237	81,906
Cpt	FO1	73,043		75,234		77,491		79,816		82,211		89,906
BC	FO2	83,998		86,518		89,114		91,787		94,541		101,074
DC	FO3	96,599		99,497		102,482		105,556		108,723		115,725

WEST NEW YORK

OLD RANK	NEW RANK	7/1/99	1/1/00	7/1/00	1/1/01	7/1/01	1/1/02	7/1/02	1/1/03	7/1/03	1/1/04	4/1/04
Lt	FO1	63,919	65,510	67,101	68,692	70,283	71,874	73,465	75,056	76,647	78,237	81,906
Cpt	FO1	75,111		77,365		79,686		82,076		84,538		89,906
BC	FO2	87,881		90,518		93,233		96,030		98,911		101,074
DC	FO3	102,820		105,905		109,082		112,355		115,725		115,725

WEEHAWKEN

OLD RANK	NEW RANK	7/1/99	1/1/00	7/1/00	1/1/01	7/1/01	1/1/02	7/1/02	1/1/03	7/1/03	1/1/04	4/1/04
Lt	FO1	66,324	67,648	68,792	70,296	71,620	72,944	74,268	75,592	76,916	78,237	81,906
Cpt	FO1	73,534		75,740		78,013		80,353		82,764		89,906
BC	FO2	85,983		88,562		91,219		93,956		96,775		101,074
DC	FO3	96,300		99,189		102,165		105,230		108,387		115,725

UNION CITY

OLD RANK	NEW RANK	7/1/99	1/1/00	7/1/00	1/1/01	7/1/01	1/1/02	7/1/02	1/1/03	7/1/03	1/1/04	4/1/04
Lt	FO1		69,439	71,598		73,746		75,958		78,237		81,906
Cpt	FO1		79,880	82,277		84,745		87,287		89,906		89,906
BC	FO2		89,803	92,497		95,272		98,130		101,074		101,074
DC	FO3		99,725	102,717		105,798		108,972		112,242		115,725

As previously noted, there will be a three (3) step salary schedule for each Fire Officer rank for Firefighters and Fire Officers promoted into these ranks on April 1, 2004 and after.

The following table illustrates each step of the salary schedules for each Fire Officer rank effective April 1, 2004.

Rank	Step	Effective April 1, 2004
FO1	1	81,906
	2	85,906
	3	89,906
FO2	1	93,074
	2	97,074
	3	101,074
FO3	1	107,725
	2	111,725
	3	115,725

This will require an adjustment in the Lieutenant rate of an additional \$3,667 (\$78,237 to \$81,906) at a three month cost of \$917 for each Lieutenant serving as a Fire Officer 1 who will move to the first step of that salary schedule. This percentage increase is 4.68% for those receiving this adjustment. When the cost of this adjustment is annualized, the cost of this adjustment would average 0.9% annually for those receiving this adjustment.

Turning to the Captains, this will require an adjustment in the North Bergen rate of an additional \$7,595 at a three month cost of \$1,898 for each Captain serving as Fire Officer 1. This percentage increase is 8.7% for those receiving this adjustment. When the cost of this adjustment is annualized over the five years, the cost of this adjustment averages 1.7% annually for those receiving this adjustment. This will require an adjustment in the West New York rate of an additional \$5,368 at a three month cost of \$1,342 for each Fire Officer 1. This percentage increase is 6.3% for those receiving this adjustment. When the cost of this adjustment is annualized over the five years, the cost of this adjustment would average 1.3% annually for those receiving this adjustment. This will require an adjustment in rate in Weehawken of an additional \$7,142 at a three month cost of \$1,785 for each Fire Officer 1. This percentage increase is 8.6% for those receiving this adjustment. When the cost of this adjustment is annualized over the five years, the cost of this adjustment would average 1.7% annually for those receiving this adjustment.

I next turn to the adjustment for Fire Officer 2. The adjustment in the North Bergen rate will be \$6,533 at a three month cost of \$1,633 for each Fire Officer 2. This percentage increase is 6.9% for those receiving this adjustment. When the cost of this adjustment is annualized over the five years, the cost of this adjustment would average 1.4% annually for those receiving this adjustment. The adjustment in the West New York rate will be \$5,368 at a three month cost of \$1,342 for each Fire Officer 2. This percentage increase is 6.3% for those

receiving this adjustment. When the cost of this adjustment is annualized over the five years, the cost of this adjustment would average 1.3% annually for those receiving this adjustment. This will require an adjustment in the Weehawken rate of \$4,299 at a three month cost of \$1,074 for each Fire Officer 2. This percentage increase is 4.4% for those receiving this adjustment. When the cost of this adjustment is annualized over the five years, the cost of this adjustment would average 0.88% annually for those receiving this adjustment.

I next turn to the adjustment for Fire Officer 3. The adjustment in the rate in North Bergen would be an additional \$7,002 at a three month cost of \$1,750 for each Fire Officer 3.⁸ This percentage increase is 6.4% for those receiving this adjustment. When the cost of this adjustment is annualized over the five years, the cost of this adjustment would average 1.3% annually for those receiving this adjustment. The adjustment in the rate in Union City will be an additional \$3,483 at a three month cost of \$870 for each Fire Officer 3. This percentage increase is 3.1% for those receiving this adjustment. When the cost of this adjustment is annualized over the five years, the cost of this adjustment would average 0.62% annually for those receiving this adjustment. Likewise, this will require an adjustment in rate in Weehawken of an additional \$7,338 at a three month cost of \$1,834 for each Fire Officer 3. This percentage increase is 6.7% for those receiving this adjustment. When the cost of this adjustment is annualized over the five years, the cost of this adjustment would average 1.4% annually for those receiving this adjustment.

In the aggregate, the average rate increase of the equalization to the Regional is 4.68% for all Lieutenants working in a Fire Officer 1 position who receive the adjustment, at an annualized rate increase of 0.9%. The average rate of increase of the equalization to the Regional is 8.1% for all Captains working in a Fire Officer 1 position who receive the adjustment, at an annualized rate increase of 1.62%. The average rate increase of the equalization to the Regional is 5.5% for those Fire Officers working in a Fire Officer 2 position who receive the adjustment at an annualized rate increase of 1.1%. The average rate increase of the equalization to the Regional is 5.4% for those Fire Officers working in a Fire Officer 3 position who receive the adjustment at an annualized rate increase of 1.1%.

This method of adjustment for unification is less costly than having an adjustment transition through the five year period because the latter method would cause cumulative costs throughout the five years well in excess of implementing the adjustment on April 1, 2004. I am aware that the time of adjustment for firefighters was set on January 1, 2004 but the percentage costs of unification for Fire Officers is greater than firefighters thus warranting a delay to April 1, 2004. This factor also weighs against including the one-time non-base adjustment for firefighters previously employed by Union City, an adjustment for firefighters which is absent here.

⁸ There are no employees in the Fire Officer 3 position previously employed by North Bergen.

Given the ruling for Fire Officer 1 by the DOP, the obligation to unify the salaries of Lieutenant with Captain is one which I view as necessitated by that ruling. I have done so on a phase-in approach despite the order which arguably justifies more immediate unification which would be far more costly. I have also placed the Lieutenants on the first step of the new three step salary schedule which also eases the cost of unification.

Consideration must be given to the financial impact of the terms of the award as well as the lawful authority of the employer. On this latter point, the Regional, as a Joint Meeting, does not have a municipal cap limitation. This fact does not render statutory spending limitations irrelevant because the Regional must receive funding from the five municipalities that are subject to statutory spending limitations. The record does not reflect that the costs of the award would compel any of the municipalities to exceed its statutory spending limitation.

I conclude that this award can be funded without adverse financial impact on the municipalities, the Regional or the taxpayers from the five municipalities. The record reflects that regionalization has lowered the costs of providing fire services and that the municipalities have benefited by regionalization.

It is inherent in the policy issues promoting regionalization that efficiencies are intended to be advanced by a regionalized approach to providing services. However, to the extent that savings have been realized during the term of the

first agreement, these savings must be considered when also assessing the impact of costs.

Regionalization has resulted in a reduction of staffing. Prior to regionalization there were 332 fire personnel, 104 of whom were Fire Officers. The staff rosters submitted in both cases reflect a reduction in fire personnel to 286, of whom 93 were Fire Officers. The retirement of 58 firefighting personnel including 29 Fire Officers caused a reduction of over \$4 million in payroll costs and the Regional is operating with 11 fewer Fire Officers. Most of these retirements come under an early retirement incentive program for the Regional. The Regional was provided incentive assistance from the State to support the costs of the early retirement program. An audit of the Regional's financial statements reflect that the Regional was awarded Regional Efficiency Development Incentive Assistance from the State of New Jersey in the amount of \$4,000,000.00. A portion of the grant in the amount of \$1,700,000.00 was to be used for the Early Retirement Incentive Program of the North Bergen Regional Fire and Rescue Joint Meeting. These grant funds were disbursed evenly to the municipalities in which the retirees originated. The four municipalities of Weehawken, West New York, Union City, and North Bergen, received \$425,000.00 each to aid in the additional pension costs which will be paid for the retired firefighters and fire officers. The municipalities also did not have to include pension contributions in the amount of \$6 million as a result of S-1961 which provided relief in this area.

New officers and firefighters have been hired as evidenced by the hiring of 13 firefighters on May 17, 2000 and the promotion of 19 firefighters to Fire Officer positions in January of 2000. The Regional, however, is still operating with some 11 fewer Fire Officers and 25 fewer firefighters than before regionalization. The savings from a reduction in personnel will result in less funding from the municipalities compared to the obligations necessary to fund the pre-existing table of organization. As a result of this award, funding from the member municipalities to support the terms and conditions of employment for newly promoted Fire Officers will be less per Fire Officer than the funding required for the Fire Officers each municipality had previously employed.

Although the five municipalities will have to contribute funds to the Regional to support the cost of the award, it is relevant that these municipalities have benefited significantly from the regionalization of the fire departments since April 1, 1999. The sale or lease of property and apparatus by the municipalities to the Regional through the Hudson County Improvement Authority has resulted in disbursements to the five municipalities in the amount of \$15,078,200. These transactions were entered into pursuant to the Consolidated Municipal Service Act (N.J.S.A. 40:40b-e1 et sec.).

The municipalities also realized additional financial benefits by the application of the Regional Efficiency Aid Program (REAP) which provided more

than \$2 million in tax credits to property owners in the five municipalities which created the Regional and by way of example, \$1.4 million to West New York.

The Regional also received \$1,085,828.43 from the member municipalities under retained earnings from the prior year's budget reserves as reflected in the Regional's Report of Audit for the Year Ending December 31, 1999.

I also must note that the member municipalities who have benefited financially from the regionalization of fire services have been aware of their continued obligation to provide annual funding to the Regional to support the costs of receiving fire services from the Regional. I presume an awareness by those municipalities of the Regional's statutory obligation to enforce a status quo in terms and conditions of employment upon regionalization as well as the Regional's obligation to engage in negotiations for changes to the status quo after the municipalities no longer maintained a negotiations obligation. Simply put, the municipalities are aware that the Regional's obligation in this proceeding includes costs retroactive to the time of regionalization as well as costs going forward to the expiration date of this contract and beyond. In this respect, it is reasonable for the Regional to anticipate that the municipalities fund the terms of this award in the same manner in which it would have been obligated to fund the terms of labor agreements had the municipalities continued to employ the officers and firefighters.

Substantial evidence was submitted into the record with respect to comparisons of base salaries for Fire Officers in municipalities in both Hudson County and throughout the State of New Jersey. Most of the comparables involved, as here, are urban departments. Thorough review of these comparables reflect salary increases between 3.0% and 4.0% during the relevant contract term with sporadic increases in excess of 4.0%. The averages fall between 3.5% and 4.0%. When costs of these settlements are compared with the costs of this award, the costs of the first four years of the award are clearly beneath the averages of the comparable settlements. Because of this fact, the cumulative costs of the comparable settlements are far in excess of the costs of this award during that time period and serve to balance the costs of equalization which have been implemented towards the end of the contract. I have taken this into consideration in fashioning the terms of this award which include higher than average costs towards the end of the five years due to unification of salaries. When the costs of this award are then apportioned over the five year period, these costs fall within the range of settlements for virtually all Fire Officer contracts within the State of New Jersey. There are costs which will flow through beyond the duration of this contract which are relevant considerations in assessing the financial impacts of any future modifications to the salary schedules. Another relevant factor in balancing the future costs of this award are the elements of the award which provide modified terms for employees hired by the Regional on or after regionalization.

It is difficult to calculate the precise costs of the award due to unique circumstances which include the merging of several prior labor agreements and the unification of major terms and conditions of employment. Different methodologies produce various conclusions. The parties have provided cost analysis which have served as useful guides.

The total payroll based upon a census of 93 Fire Officers at the creation of the Regional is \$6,628,031. One percent (1%) of total payroll equaled \$66,280. Three percent (3%) annual increases effective on July 1 for each of the five contract years reflects a net annual cost of \$198,840 effective July 1, 1999, an additional \$204,804 effective July 1, 2000, an additional \$214,950 effective July 1, 2001, an additional \$217,398 effective July 1, 2002, and an additional \$223,920 effective July 1, 2003. These calculations equate to a total new annual cost of \$1,059,914, representing a total payroll of \$7,687,945.

The rate increase for the equalization step for lieutenants serving in the Fire Officer 1 position on April 1, 2004 equates to \$139,346 at a three month cost of \$34,836. The rate increase for the equalization for the Captains serving in the Fire Officer 1 position on April 1, 2004 equates to \$202,165 at a three month cost of \$50,541. The rate increase for equalization of the Fire Officer 2 position equates to \$57,088 at a three month cost of \$14,272. The rate increase for equalization of the Fire Officer 3 position equates to \$10,821 at a three month cost of \$2,705. In sum, the total cost of equalization equates to an annual cost of

\$409,420, or 5.3% and a cost of \$102,355 or 1.3% during this contract term. When the rate increases associated with regionalization (excluding the inclusion of the Lieutenant in the Fire Officer 1 position) are calculated on an annualized basis over the course of five years, the percentage increase averages 1.35%.

The rate increase for the equalization of the Lieutenants at 1.36% equates to \$104,556. When the rate increase associated with the equalization of the Lieutenant are calculated on an annualized basis over the course of five years, the percent increase averages 0.27% equating to \$20,757 per year.

I believe the terms of the award will promote the continuity and stability of employment for Fire Officers employed by the Regional. There is uniform salary schedule for all Fire Officers and I have attempted to merge major terms and conditions of employment for the Regional to the extent that I believe feasible.

I have also considered the evidence with respect to cost of living. Increases in the consumer price index are clearly below the terms of the award but, given the entire record of this proceeding, I cannot conclude that the most weight should be given to this criterion. It is relevant and has been considered and applied. Application of this standard has been sustained to the extent that the terms of the award do not reflect the substantial costs required by awarding the Association's proposals with respect to salary and other major terms and conditions of employment.

LONGEVITY & SERVICE DIFFERENTIAL

The **Regional** proposes the following contractual language:

Section 8.2: At the completion of the above pay steps to maximum an employee shall then be covered by the following longevity provision:

7 to 8 years (assuming normal pay steps)	\$1,000
9 to 11 years	\$1,750
12 to 14 years	\$2,500
15 to 19 years	\$3,250
20 to 22 years	\$4,000
at the completion of 23 years of service	\$5,000

The longevity payments set forth in this section of Article 8 are not cumulative.

The **Association** proposes the following contractual language:

- A. Every employee shall receive a longevity increment in addition to salary according to the following schedule on the dates indicated:

<u>Years of Service</u>	<u>Percentage Increment</u>
3-5	3%
6-8	7%
9-11	10%
12-14	14%
15-22	17%
23 and over	21%

- B. The employer shall commence payment of longevity increments to a qualified employee on the pay day immediately following the termination date of the prerequisite time period.
- C. Longevity increments shall be paid biweekly as are salaries used for all computation purposes.

The Regional asserts that its longevity proposal compares favorably with the amount of longevity pay received by Fire Officers employed by large fire departments throughout the United States. Specifically, the Regional points out New York City Fire Officers receive a \$2,000 longevity payment after five (5) years of service, a \$3,000 longevity payment after ten (10) years of service, a \$4,000 longevity payment after fifteen (15) years of service, and a \$5,000 longevity payment after twenty (20) years of service.

Turning to New Jersey, the Regional notes that in Atlantic City, Fire Officers receive the 2% after five years of service, 4% after ten years of service, 6% after fifteen years of service, and 10% after twenty years of service.

The Regional compares its longevity proposal to longevity benefits in Harrison, Hillside, Hoboken, and Newark. In Harrison, Fire Officers receive 2% after three 3 years of service, 4% after five years of service, 6% after ten years of service, 8% after fifteen years of service, 10% after twenty years of service, 12% at the start of year twenty-three, and (14%) at the start of year twenty-four. According to the Regional, Hillside Fire Officers receive 2% upon the fifth year of service, 4% upon the tenth year of service, 6% upon the fifteenth year of service, 8% upon the twentieth year of service, 12% upon the twenty-second year, and 14% upon the thirtieth year. Hoboken Fire Officers receive 2% at the beginning of the fourth year through the sixth year, 4% at the beginning of the seventh year

through the ninth year, 6% at the beginning of the tenth year through the twelfth year, 8% at the beginning of the thirteenth year through the fifteenth year, 10% at the beginning of the sixteenth year through the eighteenth year, 12% at the beginning of the nineteenth year through the twenty-first year, 14% at the beginning of the twenty-second year through the twenty-third year, and 16% at the beginning of the twenty-fourth year. Newark Fire Officers receive 4% after the fifth year of service, 6% after the tenth year of service, 8% after the fifteenth year of service, 10% after the twentieth year of service, 12% after the twenty-fifth year of service, and 14% after the thirtieth year of service.

Looking to the longevity benefits in the municipalities that now comprise the Regional, it details those benefits as follows: North Bergen Fire Officers hired before January 1, 1993 received 2% after three years of service, 4% after six years of service, 6% after nine years of service, 8% after 12 years of service, 10% after fifteen years of service, and 12% after twenty years of service. North Bergen Fire Officers hired after January 1, 1993 received 0% between zero to five years of service, 2% between the completion of five years through the completion of ten years, four percent between the completion of ten years through the completion of fifteen years, 6% between the completion of fifteen years through the completion of twenty years, 8% between the completion of twenty years through the completion of twenty-four years, and 10% after the completion of the twenty-fourth year. Union City Fire Officers received 3% for three to five years of service, 7% for six to eight years of service, 10% for nine to

eleven years of service, 14% for twelve to fourteen years of service, 17% for fifteen to twenty-two years of service, and 21% for years twenty-three (23) and beyond. Weehawken Fire Officers received 4% after four years of service, 6% after seven years of service, 8% after eleven years of service, 10% after fifteen years of service, and 12% after nineteen years of service. West New York Fire Officers received 4% beginning with the fifth year of service, 6% beginning with the eighth year of service, 10% beginning with the sixteenth year of service, 12% beginning with the twentieth year of service, and 14% beginning with the twenty-fifth year of service.

The Regional points out that Cpt. McGorty testified that the Association's proposal for longevity is based on the Weehawken contract, which provided for longevity increments to be paid in bi-weekly salaries. The Regional emphasizes Cpt. McGorty's testimony that the Association's proposal would increase Fire Officers' longevity rights at most levels, with Fire Officers earning a lesser percentage at first level, but increased percentages at the other levels. The Regional also notes that Cpt. McGorty testified that no Weehawken Fire Officers would actually fall under the first step. The Regional points out that under the Weehawken contract, the maximum longevity percentage was reached at the 19th year, but under the Association's proposal, another step is added at the 23rd year. The Regional emphasizes the difference between the previous Weehawken contract, where Fire Officers received 12% after 19 years, compared with 17% under the Association's proposal, or a 5% increase.

Additionally, the Regional emphasizes that under the Weehawken contract maximum longevity was 12% and would increase to 21% under the Association's proposal.

Sanzari testified that the Association's longevity proposal on the first tier is less than what had been received by West New York Fire Officers. However, the second tier and beyond is greater than what had been received by West New York Fire Officers. (T 10/17, page 36, lines 10-25). However, Sanzari acknowledged that Association's proposal incorporates a maximum longevity of 21% compared to the longevity under the West New York contract of 14%. The Regional emphasizes Sanzari's testimony that there are presently no Fire Officers from West New York with have less than six years of service, and therefore, the Association's proposal of a lower longevity percentage for Fire Officers with less than six years of service would have no practical result.

When examining the North Bergen longevity benefits, the Regional reviews Captain Zavardino's testimony regarding the genesis of a "service differential" received in North Bergen in addition to longevity:

It came about because of the senior firemen being promoted at the top scale of the firemen's contract and then being promoted into the newly formed Fire Officers. When they were promoted from the firemen's contract, as I say, senior—I'm using a senior fireman, they actually lost money or percentage. There was generally a 17 percent rank differential between firemen and —well, actually, it was 34—32 percent between fireman and captain, so when the lieutenant rank was put into place, they split the difference, give or

take, 17 percent. But as a fireman coming into our unit as a lieutenant, they would actually lose the six percent off the bat, which, in effect, made them only nine or ten percent differential, so that's when that was addressed, to keep the differential.

The Regional explains that the service differential was created to maintain a rank differential.

The Regional asserts that the rationale behind longevity payments is to reward a Fire Officer for his years of service with the fire department. The Regional maintains that this is best accomplished by establishing a flat dollar longevity rate as it has proposed. The Regional points out that any proposed longevity percentage would have a compounding effect and would disproportionately reward Fire Officers for their time of service with a fire department. According to the Regional, a longevity percentage actually gives firefighters an additional raise beyond any yearly adjustment included in a collective bargaining agreement. The Regional illustrates the compounding effect on a Regional Battalion Chief with fifteen (15) years of service under the Association's proposals. Under that example, the Regional calculates that the Battalion Chief would earn a base salary of \$87,188 in 1999 plus a 17% longevity payment, or an additional \$14,822, for a total base salary and longevity of \$102,010 per year. Continuing its example, the Regional posits that under the Association's proposals, the Battalion Chief would then receive an increase in base salary for 2000, which it assumes to be 3% for purposes of the example, which would increase the Battalion Chief's 2000 salary to \$89,804, plus a 17%

longevity payment of \$15,267. Under this example, the Regional calculates that his total base salary and longevity for 2000 would be \$105,071. According to the Regional's calculations, the Battalion Chief would receive an additional \$445 in longevity pay in 2000 even though he is still in the same longevity bracket, because of the percentage calculation on top of his higher annual base salary. The Regional characterizes the increased longevity payment that varies with annual base salary as a "hidden" annual salary increase. The Regional contends that the Association did not offer testimony in support of this extra salary increase for Fire Officers.

The Regional contrasts the percentage approach with the flat dollar approach to longevity, which it characterizes as more a reasonable recognition of years of service. Accordingly, the Regional would provide a Fire Officer with an increase in annual base salary in addition to a flat dollar rate for longevity, and the amount of longevity would remain the same. The Regional notes that this is the approach used by New York City.

In the event that a percentage rate longevity clause is awarded, the Regional asserts that the percentages proposed by the Association are absolutely outrageous. The Regional calculates that under the Association's proposal, any Fire Officer could receive a longevity payment in excess of \$21,000. The Regional asserts that the Association's proposal far exceeds longevity percentages received by other New Jersey Fire Officers. In support,

the Regional notes that in Atlantic City, Fire Officers receive the 2% after five years of service, 4% after ten years of service, 6% after fifteen years of service, and 10% after twenty years of service. The Regional compares its longevity proposal to longevity benefits in Harrison, Hillside, Hoboken, and Newark. In Harrison, Fire Officers receive 2% after three 3 years of service, 4% after five years of service, 6% after ten years of service, 8% after fifteen years of service, 10% after twenty years of service, 12% at the start of year twenty-three, and (14%) at the start of year twenty-four. According to the Regional, Hillside Fire Officers receive 2% upon the fifth year of service, 4% upon the tenth year of service, 6% upon the fifteenth year of service, 8% upon the twentieth year of service, 12% upon the twenty-second year, and 14% upon the thirtieth year. Hoboken Fire Officers receive 2% at the beginning of the fourth year through the sixth year, 4% at the beginning of the seventh year through the ninth year, 6% at the beginning of the tenth year through the twelfth year, 8% at the beginning of the thirteenth year through the fifteenth year, 10% at the beginning of the sixteenth year through the eighteenth year, 12% at the beginning of the nineteenth year through the twenty-first year, 14% at the beginning of the twenty-second year through the twenty-third year, and 16% at the beginning of the twenty-fourth year. Newark Fire Officers receive 4% after the fifth year of service, 6% after the tenth year of service, 8% after the fifteenth year of service, 10% after the twentieth year of service, 12% after the twenty-fifth year of service, and 14% after the thirtieth year of service.

Therefore, the Regional urges adoption of its longevity proposal over the Association's.

The Association notes that each of the fire departments that make up the Regional have longevity programs, and its proposal is taken from the Union City agreement which has the highest program with a 21% maximum. The Association points out that there is some variation in maximum levels, but each of the contracts provided for progressive plateaus of increased benefit. Although the Association acknowledges that the Union City contract has the highest maximum level, the Association points out that at the earlier levels, it is not the highest. The Association notes that West New York's longevity guide provides 4% in the 5th year compared to the Union City contract which provides 3% in the 5th year. The Association explains that in order to properly evaluate the longevity benefit in North Bergen, one must also consider the "service differential" benefit. According to the Association, the service differential of up to 6% at 15 years of service must be added on to the longevity benefit. The Association asserts that there is a double longevity program, including both traditional longevity and a "service differential" in North Bergen. The Association notes further that the longevity plateaus are shorter in some of the contracts which affects career value.

The Association maintains that when the different longevity programs from the prior agreements, which are currently being paid to Regional's Fire Officers are evaluated, the statutory mandate of the regionalization law must be

considered. The Association reiterates that N.J.S.A. 40:48B-4.2 provides for a continuation of the terms and conditions of existing contracts until the new contract is completed. Therefore, the Association notes that longevity and service differential benefits continue to be paid at present. The Association argues that since the legislative mandate requires that status quo be maintained until a change is “negotiated,” an arbitrator may not have the power to take or reduce a benefit. According to the Association, the clear statutory mandate requires a continuation or enhancement of benefits which do not permit a reduction or taking through any other process than negotiation. Taking this argument together with the PERC statute providing certain powers to interest arbitrators, the Association argues that the legislative goal was to unify benefits through improvement and not take any benefit from any pre-existing employment relationship. Accordingly, the Association claims that the disparate longevity benefits can only be merged to the level of the highest existing longevity benefit, as it has proposed, which is derived from the Union City contract. The Association urges consideration of the clear statutory direction and focus on a merger of the various longevity programs so as to create conversions over the term of this contract on the benefit level found in the Union City contract.

Turning to the statutory criteria, the Association notes that longevity is based upon completed years of service. The Association sought to generate a common basis for comparison. Accordingly, the Association relied upon the testimony of its financial expert Vincent Foti. According to the Association, Mr.

Foti explained that he determined how many officers fell into each number of years, and then applied a weighted average to create a value at conversion to the Association's proposal. (U. Ex. 64). Then, according to the Association, Mr. Foti compared the current longevity benefit received by Fire Officers to the benefit they would receive under the Association's proposal. For example, Mr. Foti explained that there would be no difference for the Union City Fire Officer, but a hypothetical West New York officer receiving 12% in longevity under the previous West New York agreement would receive 17% under the Association's proposal. Accordingly, Mr. Foti concluded that using weighted averages of years of service multiplied by the proposed adjustment for the entire bargaining unit resulted in a total cost of \$233,094.

According to the Association, the methodology and the counting progression used by Mr. Foti has enabled the convergence of pay rates and longevity schedules. All pay rates, as result of these calculations are the common rate for Fire Officer 1, 2 and 3. The Association notes that all of the longevity schedules are now merged with exact and statistically significant calculations into the Union City longevity program under its proposal.

According to the Association, under its calculation, the total cost for the base wage adjustment is \$801,121 and the total cost for the longevity convergence to the new schedule with all persons being on the Union City longevity program is \$233,094, and the sum of these adjustments is

\$1,034,215.00. According to the Association, the offsets to this sum are significant and the current employee costs for this bargaining unit are less than the costs for the pre-existing multiple municipal departments before regionalization.

The parties have both proposed longevity schedules. The Regional's proposal would provide fixed sum longevity payments, while the Association's would provide longevity as a percentage of salary. The previous agreements in each of the municipalities provided longevity benefits as a percentage of salary. However, some of the agreements included two longevity schedules based upon the Fire Officer's date of promotion. Review of the longevity benefits provided under the predecessor agreements follows.

Pursuant to the four municipal contracts, Fire Officers currently employed by the Regional received varying amounts and percentages of longevity depending upon which municipal department they worked for originally, their initial date of hire and their years of service. Specifically, under the previous North Bergen agreement, Fire Officers hired before January 1, 1993 received two percent (2%) after three (3) years of service, four percent (4%) after six (6) years of service, six percent (6%) after nine (9) years of service, eight percent (8%) after twelve (12) years of service, ten percent (10%) after fifteen (15) years of service, and twelve percent (12%) after twenty (20) years of service. North Bergen Fire Officers hired after January 1, 1993 received two percent (2%) after

the completion of five (5) years of service, four percent (4%) after the completion of ten (10) years of service, six percent (6%) after the completion of fifteen (15) years of service, eight percent (8%) after the completion of twenty (20) years of service and ten percent (10%) after the completion of twenty-four years of service. Union City Fire Officers received three percent (3%) for three (3) to five (5) years of service, seven percent (7%) for six (6) to eight (8) years of service, ten percent (10%) for nine (9) to eleven (11) years of service, fourteen percent (14%) for twelve (12) to fourteen (14) years of service, seventeen percent (17%) for fifteen (15) to twenty-two (22) years of service, and twenty-one percent (21%) for years twenty-three (23) and beyond. Weehawken Fire Officers received four percent (4%) after four (4) years of service, six percent (6%) after seven (7) years of service, eight percent (8%) after eleven (11) years of service, ten percent (10%) after fifteen (15) years of service, and twelve percent (12%) after nineteen (19) years of service. West New York Fire Officers received four percent (4%) beginning with the fifth (5th) year of service, six percent (6%) beginning with the eighth (8th) year of service, ten percent (10%) beginning with the sixteenth (16th) year of service, twelve percent (12%) beginning with the twentieth (20th) year of service, and fourteen percent (14%) beginning with the twenty-fifth year of service.

On the issue of longevity for Fire Officers previously employed by the municipalities, I conclude that a unification on this issue should be achieved. Because salaries have been unified, it is reasonable to also unify longevity

benefits but in a manner which does not produce harsh inequities or windfalls to employees.

The labor agreements in the member municipalities varied widely on the issue of longevity benefits. Based on those labor agreements noted above, the longevity scheme in Weehawken range from 2% to 12% for years of service between 3 and 19. The longevity scheme in North Bergen ranges from 2% to 12% for years of service between 3 to 20. The longevity scheme in West New York ranges from 4% to 14% for years of service between 5 and 25. The longevity scheme in Union City ranges from 3% to 21% for years of service between 3 to 23. A retention of the specific longevity programs previously enjoyed would result in substantial disparities in compensation inconsistent with having a single new employer.

The adoption of a longevity scheme reflecting the schedule of years of service and percentage of longevity pay as now provided in the West New York agreement represents the most feasible longevity program for Fire Officers employed by the Regional who were previously employed by the member municipalities. That program provided:

Beginning with 5 th year of Service	4% of base annual salary
Beginning with 8 th year of Service	6% of base annual salary
Beginning with 12 th year of Service	8% of base annual salary
Beginning with 16 th year of Service	10% of base annual salary
Beginning with 20 th year of Service	12% of base annual salary
Beginning with 25 th year of Service	14% of base annual salary

This schedule shall be effective January 1, 2003 for service accruing through December 31, 2002. Fire officers shall receive longevity pursuant to their prior schedules through December 31, 2002. This schedule will provide more than currently provided in Weehawken and North Bergen, the same as in West New York but less than provided in Union City. Fire officers previously employed by Union City who are receiving 14% or more than 14% through December 31, 2002 shall retain the longevity percentage they currently enjoy but the percentage received will not increase pursuant to the former schedule. No Fire Officer who has or will have earned 14% through December 31, 2002 will lose any longevity benefit which they have currently earned. Fire officers who have or will earn less than 14% through December 31, 2002 shall be pegged at the new longevity schedule and receive longevity benefits pursuant to the years of service set by that schedule.

The Association would add the service differential in North Bergen on to the longevity benefit for all Fire Officers including those who do not have a service differential. The Association has not established a basis for the inclusion of service differential for either the employees who do not currently enjoy this benefit pursuant to a prior labor agreement or an increase in the amount of the service differential for those who currently receive it. However, this benefit currently exists in North Bergen and Weehawken and is a benefit which those employees who began to receive this benefit had a reasonable expectation for

continuation. I conclude that there should be no expansion of service differential to Fire Officers who are employed in those municipal departments whose agreements contain no service differential and for Fire Officers hired by the Regional. I also conclude that this benefit shall not be awarded for those employees in North Bergen and/or Weehawken who did not earn a service differential benefit or would not have earned a service differential benefit as of December 31, 2002. For those Fire Officers previously employed in North Bergen and/or Weehawken who are presently receiving the service differential or would earn a service differential as of December 31, 2002, I award a retention of that service differential at the level earned by that date but I do not award a continuation of that benefit at a higher percentage beyond that which was earned as of December 31, 2002. Except for these employees, reference to service differential shall be deleted from the agreement. I also award a continuation of the inclusion of longevity and service differential benefits as added to base salary.

I also award a modified longevity package for future Fire Officers whose employment commenced on or after regionalization and whose overall seniority did not include prior service with the member municipal departments. These future Fire Officers would not have been covered under any of the previous longevity programs. I give weight to the Regional's ability to negotiate a longevity program reflective of its unique character without having that benefit tied to previous agreements made by individual municipalities over the course of time.

The new longevity program will modify each party's proposals and one which mirrors the longevity program awarded for new hires in the firefighters unit. The program will be reflected as percentage rather than dollar amounts but at time sequences proposed by the Regional. This longevity program for Fire Officers hired by the Regional on or after the commencement of regionalization will provide a maximum percentage of 7%.

Accordingly, I award the following longevity programs:

Fire Officers previously employed by member municipalities shall receive the following longevity schedule effective January 1, 2003 for service accruing through December 31, 2002:

Beginning with 5 th year of Service	4% of base annual salary
Beginning with 8 th year of Service	6% of base annual salary
Beginning with 12 th year of Service	8% of base annual salary
Beginning with 16 th year of Service	10% of base annual salary
Beginning with 20 th year of Service	12% of base annual salary
Beginning with 25 th year of Service	14% of base annual salary

Fire Officers previously employed by Union City who are receiving or will have earned 14% or more than 14% through December 31, 2002 shall retain the longevity percentage they would enjoy at that time but the percentage received will not increase pursuant to the former schedule. I also award a continuation of the inclusion of longevity benefits as added to base salary.

Fire Officers who were employed by the Regional on or after regionalization and whose overall seniority did not include prior service with the member municipal departments, shall be covered by the following longevity provision:

7 to 8 years	2% of base annual salary
9 to 11 years	3% of base annual salary
12 to 14 years	4% of base annual salary
15 to 19 years	5% of base annual salary
20 to 22 years	6% of base annual salary
at the completion of 23 years of service	7% of base annual salary

The longevity payments set forth in this section are not cumulative and shall be included for the purpose of base pay.

For those Fire Officers previously employed by North Bergen and/or Weehawken who are presently receiving the service differential or would earn a different service differential as of December 31, 2002, I award a retention of that service differential at the percentage level earned by that date but I do not award a continuation of that benefit at any higher percentage beyond that which was earned as of December 31, 2002. For those employees eligible for service differential, the amount shall be in addition to base pay.

I do not award an expansion of service differential to Fire Officers who were employed in those municipal departments whose agreements contain no service differential for those Fire Officers hired on or after regionalization nor award this benefit for those employees in North Bergen and Weehawken who will not have earned a service differential benefit as of December 31, 2002. Except for those firefighters who are presently receiving the service differential or would earn a service differential as of December 31, 2002, reference to service differential shall be deleted from the agreement.

INSURANCE

The **Regional** proposes the following contractual language:

HEALTH INSURANCE

Section 11.0: The Employer will provide health-care insurance protection, however, this statement, or any other contract language, is not to be construed as limiting the Employer's sole authority to change insurance carriers or coverage, if equivalent or a net improved coverage can be obtained. The Regional reserves the right and has the sole authority to change health care plans to be self-insured, fixed premium, preferred provider organization or HMO's or to offer a choice or combination of such programs. The basic program and coverage for each covered employee shall be:

Section 11.1: Group Hospitalization and Diagnostic, X-Ray, Laboratory, and Major Medical with the employer paying the full

premium for each active employee and for each PFRS retired member, and in cases were applicable, 75% of the premium associated with family plan insurance covering dependents.

Section 11.2: The Employer will provide a Prescription Drug Program which shall require a five dollar co-payment.

Section 11.3: The Employer shall make full payment in the above health care insurance protection on behalf of all employees including those members who are on authorized sick leave and/or injured in the line of duty.

DENTAL INSURANCE

Section 11.4: The Employer will provide a Dental Plan for all employees covered by this Agreement and their dependents. This Plan will have a deductible of \$25 for individuals, \$75 maximum deductible for family coverage and cover 80% of U.C.R. up to \$1000 per calendar year for all eligible charges. There will be 100% coverage up to \$800 per lifetime for orthodontia.

PRESCRIPTION EYE GLASS

Section 11.5: The Employer agrees to provide an Prescription Eye Glass Plan for employees covered by this Agreement and their dependent up to a maximum benefit per employee of \$125.

RETIREE COVERAGE

Section 11.6: Medical coverage (including dependents) for employees retiring subsequent to the signing of this Agreement shall be provided as follows:

- a. For retirees retiring from a job-related disability with five (5) years of credited service in PFRS.
- b. For retirees retiring from a non-job related disability with twenty (20) years of credited service in PFRS.
- c. For all retirees with at least twenty-five years of credited service in PFRS.

MISCELLANEOUS BENEFIT PROVISIONS

Section 11.7: The Employer may change insurance plans and/or carriers or self insure so long as in the aggregate each plan is

substantially similar to the plan or program in existence at the expiration of this Agreement.

Section 11.8: The Employer shall have the right to adopt health care cost-containment measures and cost management techniques, including but not limited to:

- a. requirement of pre-admission certification;
- b. mandatory second surgical opinions;
- c. limitations on diagnostic and in-hospital testing;
- d. restrictions on day of admission;
- e. peer review.

The Regional urges adoption of its insurance proposals asserting that it would provide comprehensive health insurance, a prescription program, a dental plan and an optical plan. Specifically the Regional proposes that all of its employees be included in the State Health Benefits and urges that all of its employees be put into the same health care system. In support of its proposal for a single health care system, the Regional notes that not all Fire Officers enjoy the same benefits. For example, the Regional points out that Weehawken Fire Officers do not presently enjoy a prescription benefit. The Regional also notes that under its proposal all Fire Officers would receive prescription coverage at retirement.

The Regional acknowledges that some differences in benefit levels would remain. According to the Regional, North Bergen Fire Officers who currently enjoy eyeglass and dental insurance upon retirement would continue to do so, but the Regional does not propose to extend that benefit to Fire Officers who worked for the other municipalities.

The Regional maintains that since the Association did not offer evidence opposing the implementation of such a plan, the Regional's medical insurance proposal should be adopted.

The Association asserts that the medical benefits currently enjoyed should be continued. The Association maintains that the Regional has not demonstrated why an alternative program should be implemented. The Association acknowledges that its proposal for the status quo may not be the most efficient alternative, it argues that the record supports such a result. At the time of the hearing, the Regional and the Association continued to meet to resolve the issue of health insurance benefits. Ultimately the parties were unable to reach an agreement. Due to the continuation of discussions at the time of hearing, the Association did not make a specific proposal for health insurance other than that the status quo be maintained for all Fire Officers and retirees.

Health insurance is a major term and condition of employment with significant implications for each party. Administration, costs and benefit levels are paramount considerations. This benefit is one which should be merged or unified for all employees of the Regional. The interests of the Regional and all of its employees will be served by a single contract providing comprehensive health insurance benefits for all of its firefighting personnel regardless of unit placement. The Association's plea for a continuation of health insurance programs based upon individual prior contracts and arrangements with each municipality is simply

not feasible. This conclusion, of course, does not resolve the issues of levels of benefits or co-payment for dependents as the Regional has proposed. Those issues must be examined independently from the conclusion that a unified health insurance program would serve the public interest, the Regional and the Fire Officers.

Under the circumstances previously outlined, the Regional's argument that the New Jersey State Health Benefits Program (SHBP) serves the purpose of providing comprehensive health insurance benefits under a single contract is persuasive. Weehawken currently receives coverage under this plan. The SHBP provides employee choice for selection of programs including Traditional, Point of Service and HMO. Thus, the employee has the ability to tailor his or her selection based upon his or her individualized needs and desires. However, the Regional's proposal is not awarded to the extent that it does not name the specific health insurance carrier and provides for unilateral determinations by itself to change health care plans which include the ability to change the plan to various kinds of programs such as HMOs or PPOs. Under those circumstances, employee choice and the Regional's negotiations obligations would be negated. The Regional shall select the SHBP or select a carrier who meets the standard of "equal or better" benefits to the SHBP. I have awarded that standard below. The Regional's proposal is also not awarded to the extent that it proposes the payment of premiums (at a 75% level) by employees for family plan insurance which covers dependents. None of the previous insurance plans provided for co-

payments and none are awarded herein. The Regional's insurance plan shall extend to all members of the bargaining unit.

The Association has objected to the ambiguities included in the Regional's proposal. There is merit to the Association's argument that ambiguities on this issue should be at a minimum. This arbitrator takes notice that the New Jersey State Health Benefits Program publishes a Comparison Chart summarizing how a specific service or level of benefit is covered including the level of deductibles for each of the insurance selections the employee may make. The last such publication was effective January 1, 2002. I award, in the event of any ambiguity or disagreement, that the standards set forth in that publication shall prevail. The Regional's obligation to provide health benefits under the SHBP program or one "equal or better" to that plan shall commence no earlier than January 1, 2003.

The Regional has proposed dental insurance and a prescription eyeglass plan. The Association seeks to maintain these benefits where they have been provided previously. Similar to my conclusion with respect to health insurance, any such dental or prescription eyeglass plan should be unified for all unit employees and effective no earlier than January 1, 2003.

Each proposal provides for a dental plan for all unit employees and their dependents. Based upon the respective positions of the parties, and in

consideration of the prior individual coverages for dental insurance, I award the following:

Effective January 1, 2003, the Regional shall provide a dental plan with dental insurance for all unit employees and their dependents. The Plan will have a deductible of \$25 for individuals and \$75 maximum deductible for family coverage. The Plan shall cover 80% of U.C.R. up to an annual cap of \$1,500 per covered individual per year for all eligible charges. The Plan shall also provide 100% coverage for orthodontics with a lifetime cap of \$1,500 for each covered individual.

Based upon the respective submissions of the parties, I award an employer-provided prescription eyeglass plan for unit employees and their dependents up to a maximum of \$125 per year per covered individual. Coverage shall include an annual eye examination, including glaucoma tests and the costs of glasses and/or contacts.

The Regional proposes a prescription drug program with a \$5 co-payment. However, a differential between generic and brand name drugs could generate cost savings by providing incentives for employees to use generic and mail order prescriptions. Additionally, a prescription drug program should provide a unified program for all Regional employees unless the co-payments are set at a different level in the insurance program selected by the employee. In the Award covering the Regional Firefighters, I award a \$5 co-payment for name brand drugs and a \$3 co-payment for generic drugs and a \$0 co-payment when drugs are ordered by mail. Accordingly, I award the following program effective January 1, 2003.

The Regional shall provide a prescription drug program for unit employees and their dependents. The employee co-payment shall be \$5 for brand name drugs, \$3 for generic drugs and \$0 for mail order unless set otherwise by an employee's selection of insurance program.

The Union has proposed a continuation of a program where the employer reimburses an employee for life insurance coverage. The agreements do not reflect this benefit. However, to the extent that such coverage is currently provided, I award a continuation, but no expansion, of any such program.

The Regional's proposal to adopt health care cost containment measures and cost management techniques is not awarded due to the awarding of the State Health Benefits Plan which provides internal regulations with respect to such issues.

The Regional has proposed the ability to change health insurance plans and/or carriers or to provide for self insurance. The Regional proposes that a standard of "substantially similar" be adopted in relation to its ability to change. The Regional should maintain the ability to change health insurance plans. This is consistent with law. However, limits akin to those included in the Firefighters agreement are appropriate to ensure continued consistency of health insurance benefits for all Regional employees. Accordingly, I conclude that a 60 day notice provision before any change is adopted is reasonable due to the complexity of any issue which might arise. Any such change shall not require the mutual

agreement of the Association but must meet the standard awarded herein. That standard shall be that any such change provide “equal or better” benefits because the primary objective of any change should be directed towards cost savings rather than a reduction in coverage. This conclusion does not require that any change provide identical benefits or coverage. There should be some recognition that any proposed change could involve some differences but the adoption of the “equal or better” standard allows for the presumption and guarantee that any new insurance plan provide equal or better benefits in the aggregate and that no major element of medical coverage be reduced or eliminated.

I next turn to the issue of Retiree Coverage. There are two prongs to this issue. The Regional and the Association both propose Retiree Coverage for those already retired and for unit members who will retire in the future. The Regional proposes that they be included in the State Health Benefits Plan while the Association proposes that retirees maintain their current health benefits provided under the municipal agreements.

The SHBP provides health care benefits upon retirement. It also includes a retiree prescription drug benefit. The SHBP also provides that retiree prescription coverage have a co-payment and an annual ceiling on co-payment. The SHBP also provides retiree health care benefits with a schedule for deductibles and ceiling on out-of-pocket costs for retirees and dependents.

Effective January 1, 2003, I award retiree coverage for each Fire Officer (including dependents) who retires thereafter. They shall receive employer-paid health insurance and also prescription drug coverage as set forth in the SHBP. These retirees shall also receive the dental and prescription eyeglass coverage in effect at the time of their retirement.

For unit employees who have retired prior to the change in health insurance carrier, I award a continuation of retiree health insurance and other insurance coverage at a level appropriate to that set by the municipal collective negotiations agreements in effect prior to the issuance of this award. This aspect of the award is necessary through the term of this new Agreement because of legal uncertainties on retiree health coverage which cannot be resolved based upon the record developed at hearing. The time period between the issuance of this Award and the expiration of this Agreement will allow for further research and preparation on this issue for negotiations of the next Agreement and provide a basis for the parties to negotiate over any modifications which either party seeks to make with respect to this issue.

The remaining issue on retiree coverage concerns eligibility. I award the following. For employees employed prior to the effective date of regionalization, I award the following eligibility requirements. For employees to be eligible to receive retiree insurance, the member:

1. Must retire on a disability pension, or
2. Must have 25 or more years of service credit in a State or locally administered retirement system; and
3. The employee must have a period of service up to 20 years with the employer at the time of retirement except that members who were transferred from the Municipal departments. The time the member had with the Municipal Departments shall be considered time with the North Hudson Regional Fire and Rescue as if that service was performed for this employer for the purposes of this Article.

For employees hired on or after the effective date of regionalization, I award the following eligibility requirements:

- a. For retirees retiring from a job-related disability with five (5) years of credited service in PFRS. An employee with less than five (5) years may make application for waiver of this provision to the Regional.
- b. For retirees retiring from a non-job related disability with twenty (20) years of credited service in PFRS.
- c. For all retirees with at least twenty-five years of credited service in PFRS.

The insurance provisions of the agreement shall read as follows:

Effective January 1, 2003, the Employer will provide health-care insurance protection under the New Jersey State Health Benefits Program (SHBP) for all unit employees and their dependents or a health insurance plan providing benefits equal to or better than the NJSHBP.

Effective January 1, 2003, the Employer will provide a Prescription Drug Program for all unit employees and their dependents which shall require a five dollar (\$5.00) co-payment for brand name drugs,

a three dollar (\$3.00) co-payment for generic drugs and zero (\$0) co-payment for mail order drugs.

The Employer shall make full payment in the above health care insurance protection on behalf of all employees including those members who are on authorized sick leave and/or injured in the line of duty.

DENTAL INSURANCE

Effective January 1, 2003, the Employer shall provide a dental plan with dental insurance for all unit employees and their dependents. The Plan will have a deductible of \$25 for individuals and \$75 maximum deductible for family coverage. The Plan shall cover 80% of U.C.R. up to an annual cap of \$1,500 per covered individual per year for all eligible charges. The Plan shall also provide 100% coverage for orthodontics with a lifetime cap of \$1,500 for each covered individual.

PRESCRIPTION EYEGLASS

The Employer agrees to provide a Prescription Eyeglass Plan for unit employees and their dependents up to a maximum of \$125 per year per covered individual. Coverage shall include an annual eye examination, including glaucoma tests and the costs of glasses and/or contacts.

RETIREE COVERAGE

Effective January 1, 2003, Fire Officers (including dependents) who retire subsequent to the change in health insurance carrier shall receive employer-paid health insurance and prescription drug coverage as set forth in the SHBP. These retirees shall also receive the dental and prescription eyeglass coverage in effect at the time of their retirement.

For unit employees who have retired prior to the change in health insurance carrier, I award a continuation of retiree health insurance and other insurance coverage at a level pursuant to that set by the municipal collective negotiations agreements in effect prior to the issuance of this award.

For employees employed prior to the effective date of regionalization, I award the following eligibility requirements. For employees to be eligible to receive retiree insurance, the member:

1. Must retire on a disability pension, or
2. Must have 25 or more years of service credit in a State or locally administered retirement system; and
3. The employee must have a period of service up to 20 years with the employer at the time of retirement except that members who were transferred from the Municipal departments. The time the member had with the Municipal Departments shall be considered time with the North Hudson Regional Fire and Rescue as if that service was performed for this employer for the purposes of this Article.

For employees hired on or after the effective date of regionalization, I award the following eligibility requirements:

1. For retirees retiring from a job-related disability with five (5) years of credited service in PFRS.
2. For retirees retiring from a non-job related disability with twenty (20) years of credited service in PFRS.
3. For all retirees with at least twenty-five years of credited service in PFRS.

MISCELLANEOUS BENEFIT PROVISIONS

The Employer may change insurance plans and/or carriers or self insure upon sixty (60) days prior notice to the Union so long as, in the aggregate, the new plan provides "equal or better" benefits than the plan or program in existence at the expiration of this Agreement.

The Regional shall continue to provide reimbursement for guaranteed term life insurance only to those employees who are receiving this reimbursement as of the date of this award.

PENSIONS AND RETIREMENT BENEFITS

The **Regional** proposes the following contractual language:

Section 12.0: The Employer shall provide pension retirement benefits to employees covered by this Agreement pursuant to

provisions of the statutes and laws of the State of New Jersey. The Regional shall do everything required by it, pursuant to law, to secure pensions for all qualified employees.

Section 12.1: Pensions and insurance coverage shall be the same for an employee who is injured or killed while on duty with the Regional and who, while acting within the scope of his employment, is rendering aid to a neighboring community, as though the injury or death occurred within the territorial limits of the Regional.

Section 12.2: The Employer shall continue to make necessary payments to, and on behalf of, an employee who is on sick leave and/or has been injured in the line of duty and within the scope of his employment as though said employee remained on active duty.

The Regional proposes to provide pension retirement benefits to Fire Officers pursuant to provisions of State law that require it to secure pensions for all qualified employees. The Regional notes that its proposal would provide the same pension and insurance coverage for an employee who is injured or killed while on duty with the Regional and who, while acting within the scope of his employment, is rendering aid to a neighboring community, as though the injury or death occurred within the territorial limits of the Regional. Finally, the Regional would continue to make necessary payments to, and on behalf of, an employee who is on sick leave and/or has been injured in the line of duty and within the scope of his employment as though the Fire Officer remained on active duty.

The Association did not offer a specific proposal on this issue.

Each of the predecessor agreements in the municipalities that comprise the Regional include a provision that a pension shall be provided as required by State law. The Regional's proposal is similar to the provision in the Union City agreement, which also covers Fire Officers working within the scope of their

employment as well as those on sick leave or who were injured in the line of duty. I award the Regional's proposal with the clarification included in the Award covering firefighters that "within the scope of his employment" is intended to mean being involved in rendering aid to a neighboring community while performing a function within the scope of functions and duties which are reasonably within the scope of what that employee would perform while acting as a firefighter for the NHRF&R Department.

The previous North Bergen agreement included a provision that provided that Fire Officers who retire between the 25th and 26th years of continuous service shall receive additional compensation as follows:

Deputy Chief	\$12,000
Lieutenants	\$ 8,500
Captains	\$10,000
Battalion Chiefs	\$11,000

That provision was stated to sunset at the end of that contract. As is stated in the Award covering the Regional's firefighters, the fact that this proposal existed in North Bergen is an insufficient basis to award it in the Regional's first agreement. Although I do not award this proposal, it would be inequitable to fail to make this provision accessible to North Bergen Fire Officers nearing completion of their careers who anticipated taking advantage of this benefit. Accordingly, I award a continuation of this benefit solely to North Bergen Fire Officers who accrued 20 or more years of continuous service at the time of

regionalization and that any reference to this provision be deleted from the Agreement after it is no longer operational.

Accordingly, the provision covering Pensions and Retirement shall provide as follows:

Section 12.0: The Employer shall provide pension retirement benefits to employees covered by this Agreement pursuant to provisions of the statutes and laws of the State of New Jersey. The Regional shall do everything required by it, pursuant to law, to secure pensions for all qualified employees.

Section 12.1: Pensions and insurance coverage shall be the same for an employee who is injured or killed while on duty with the Regional and who, while acting within the scope of his employment, is rendering aid to a neighboring community, as though the injury or death occurred within the territorial limits of the Regional.

Section 12.2: The Employer shall continue to make necessary payments to, and on behalf of, an employee who is on sick leave and/or has been injured in the line of duty and within the scope of his employment as though said employee remained on active duty.

Employees previously employed by North Bergen who had at least 20 years of continuous service with North Bergen at the time of regionalization and who retire between the 25th and 26th year of continuous service with North Bergen and the Regional shall receive the following compensation:

Deputy Chief	\$12,000
Lieutenants	\$8,500
Captains	\$10,000
Battalion Chiefs	\$11,000

This provision shall be deleted from the agreement after it is no longer operational.

AWARD

All proposals by the Regional and the Association not awarded herein shall be denied and dismissed. Any tentative agreements not reflected in this award shall be incorporated by reference herein.

PREAMBLE

This Agreement by and between North Hudson Regional Fire & Rescue, (also referred to as "Employer" or "Regional") and the North Hudson Fire Officers Association (also referred to as "Association")

WITNESS TO,

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Fire Officers Association recognize and declare their mutual aim to be the promotion of an understanding, harmonious relationship between them, and

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Fire Officers Association desire that the service to the community be continuous and efficient, and

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Fire Officers Association have carried on collective bargaining and reached certain understandings which they desire to incorporate and confirm in this Agreement, be it

RESOLVED, in consideration of the following covenants it is mutually agreed as follows:

ASSOCIATION RECOGNITION CLAUSE

North Hudson Regional Fire & Rescue, pursuant to the recognition granted by the Public Employees Relations Commission, recognizes North Hudson Fire Officers Association as the exclusive representative of employees in classifications covered by the contract. This contract shall apply to all permanent employees working in the classifications listed below, and to any other classification which may be established within the scope of the duties now included within these classifications: Lieutenants, Captains, Battalion Chiefs and Deputy Chiefs (now Fire Officer 1, Fire Officer 2, and Fire Officer 3).

MANAGEMENT RIGHTS

1. North Hudson Regional Fire & Rescue hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the laws and Constitutions of the State of New Jersey and of the United States, including, but not limited the following:
2. The executive management and administrative control of the Regional and its properties, facilities and activities of its employees utilizing personnel methods and means of the most appropriate and efficient manner possible as may from time to time be determined by the Regional.
3. To make rules of procedure and conduct, subject to N.J.S.A. 13A:5-1 et. sec., to use improved methods and equipment, as well as duties, to decide the number of employees needed for any particular time and to be in sole charge of the equality and quantity of the work required.
4. To hire all employees, whether permanent, temporary, or seasonal, to promote, transfer, assign or retain employees in positions within North Hudson Regional Fire & Rescue subject to Civil Service law.
5. To suspend, demote, discharge or take any other appropriate disciplinary actions against any employee.
6. To lay off employees in the event of lack of funds or under conditions where continuation of such work would be inefficient and non-productive consistent with the provisions of civil service law.
7. The exercise of the above powers, rights, authority, duties and responsibilities and the use of judgment and discretion in connection therewith, shall be limited by the terms of this Agreement and then only to the extent that such terms are in conformance with the Constitutions and laws of New Jersey and of the United States.
8. The exercise of any management rights set forth herein shall be consistent with the terms of this Agreement.

ASSOCIATION RIGHTS

1. Employees, not to exceed three (3) who are elected officers, delegates, trustees and/or alternates of the Union or who have been elected to State or international office, shall be granted time off from normal duties to attend the following designated conventions:

IAFF or FMBA International Convention

IAFF or FMBA State Convention

IAFF or FMBA District Convention

2. The time off granted shall not be more than the length of the convention plus, in the event that the event is outside the State of New Jersey, one calendar day before and one calendar day after, in any event, not to exceed one (1) 24-hour tour per employee. The Association will designate in writing who will attend each convention ten (10) days prior to the date of the convention. All arrangements for taking time off under this Section will be cleared with the Executive Director or his designee. Whenever a duly authorized representative of the Association exercises his right to attend such convention, the department's vacation schedule for that time period shall be adjusted to reflect such leave so as to avoid the unnecessary expenditure of overtime.
3. The Employer will permit up to two (2) authorized Association representatives reasonable time off with pay to attend to Association business, including to investigate and seek to settle grievances and to attend all meetings and conferences on collective negotiations with departmental officials provided the Association gives reasonable notice to the department in advance.
4. In the event a Firefighter or Fire Officer is killed in the line of duty, the Employer will permit at least two (2) association officers time off if they are scheduled to work to participate in the funeral services.
 - a. Subject to the availability of same the Employer will permit a fire department vehicle to be utilized by the Association for the above-referenced funeral service.
5. Authorized representatives of the Association shall be permitted to visit Fire Headquarters, Firehouses or the office

of the Fire Director for the purposes of ascertaining whether or not this agreement is being observed.

6. A written list of the names of Association officers of the newly formed bargaining agent, as per PERC, will be furnished to the Employer, and the Association shall notify the Employer of any change.

OFFICE SPACE

The Employer shall provide an office for the sole and exclusive use by the Association. This office shall be of reasonable size and condition and shall be located in a Fire Department building in a location that shall not interfere with or interrupt normal fire operations.

BULLETIN BOARDS

1. The Employer will supply one (1) bulletin board for the use of the Association to be placed in a conspicuous location at each firehouse.
2. The bulletin board shall be for the use of the Association and for posting notes and bulletins pertaining to the Association's business activities or matters dealing with the welfare of the employee.

ORGANIZATIONAL RIGHTS

1. Except in exigent circumstances, the Association shall be informed and consulted prior to promulgation of any new rule or the proposed modification of any present rule, said notice to the organization shall be given no later than fourteen (14) calendar days before the effective date of any change.
2. The employer shall not enter into a contractual agreement with an Association member which in any way alters, reduces, compromises, amends or conflicts with the terms and provisions of this Agreement and the rights and privileges conferred pursuant to this Agreement.

DEDUCTIONS FROM SALARY

1. North Hudson Regional Fire and Rescue agrees to deduct from the salaries of its employees subject to this agreement dues for the Association. Such deduction shall be made in compliance with N.J.S.A. 52:14.9e, as amended. Such monies together with any records of corrections shall be transmitted to the Union Office.
2. Any employee in the bargaining unit on the effective date of this Agreement who does not join the Association within thirty (30) days thereafter, any new employee who does not join within thirty (30) days of initial employment within the unit, and any employee previously employed within the unit who does not join with ten (1) days of re-entry into employment with the unit shall, as a condition of employment, pay a representation fee to the Association by automatic payroll deduction.

The representation fee shall be in an amount equal to eighty-five (85%) percent or whatever is permitted by law, of the regular Association membership dues, fees and assessments as certified to the employer by the Association. The Association may revise its certification of the amount of the representation fee at any time to reflect changes in the regular Association membership dues, fees and assessments as certified to the Employer by the Association. The Association's entitlement to the representation fee shall continue beyond the termination date of this agreement, so long as the association remains the majority representative of the employees in the unit, provided that no modification is made in this provision by a successor agreement between the Association and the Employer. The Association shall establish and/or advise the Employer that it has established a demand and return system in accordance with N.J.S.A. 34:13A-5.5.

3. The Association will annually provide the necessary "check-off authorization" form and deliver the signed forms to the Executive Director. The Association shall indemnify, defend and hold the Regional harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of action taken by the Regional in reliance upon the salary deduction authorization cards submitted by the Association to North Hudson regional Fire & Rescue.

4. Changes:

The association will notify the employer in writing of any changes in the list provided for in paragraph 1 above and/or the amount of the representation fee, and such changes will be reflected in any deductions made more than twenty-one (21) days after the Employer received said notice.

5. New Employees:

On or about the last day of each month, beginning with the month this Agreement becomes effective, the Employer will submit to the Association, a list of all employees who began their employment in a bargaining unit position during the preceding 30 day period. The list shall include name, dates of employment, their address, birth date, classification, and rate of pay. The Department will similarly notify the Association of all Employees who are terminated from the Employer's payroll.

6. The Association shall indemnify, defend and save the Department harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the Department in reliance upon salary deduction authorization cards and submitted by the Association to the Department or in reliance upon the official notification on the letterhead of the Association and signed by the President of the Association advising of such changed deduction.

7. The Association shall establish and maintain a procedure whereby any employee can challenge the assessment as computed by the Association. This appeal procedure shall in no way involve the Department or require the Department to take any action other than to hold the fee in escrow pending resolution of the appeal.

RIGHTS OF MEMBERS

Pursuant to Chapter 303, Public Laws of 1968, the employer hereby agrees that every fire officer shall have the right freely to organize, join and support the Association and its affiliates for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As a body exercising governmental power under the laws of the State of New Jersey, the employer undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any fire officer in the enjoyments of any rights conferred by Chapter 303, Public Laws of 1968 or other Laws of New Jersey or the Constitution of New Jersey and the United States; that it shall not discriminate against any employee with respect to hours, wages or any terms or conditions of employment by reason of his membership in the Association and its affiliates, his participation in any activities of the Association and its affiliates, collective negotiations with the Employer, or his institution of any grievance, complaint or proceeding under this Agreement or otherwise with respect to any terms and conditions of employment.

A fire officer shall be granted time to eat during his/her tour of duty, except in the case of unusual or emergency situations.

The employer and the Association agree that there shall be no discriminating against any employee because of race, creed, color, age, religion, sex, national origin or political affiliation.

The employer and the Association agree that all members covered under this Agreement have the right without fear of penalty or reprisal to form, join and assist any employee organization or to refrain from any such activity. There shall be no discrimination by the employer or the Association against any employee because of the employee's membership or non-membership or activity or non-activity in the Association.

SENIORITY

1. Seniority is defined to mean the accumulated length of service in the highest attained grade, with North Hudson Regional Fire & Rescue and any prior accumulated service with the fire departments of the City of Union City, Township of Weehawken, Town of West New York, Township of North Bergen, and Guttenberg. Seniority is not counted for time when an employee is on a layoff. Outside the exception stated above, a resignation and rehire creates a new hiring date. An employee's length of service shall not be reduced by time lost due to an injury or illness in the line of duty.
2. Seniority principles shall apply to employees covered by this Agreement with respect to layoff and recall from layoff as prescribed by Department of Personnel's rules and regulations in this area.
3. The seniority list shall be supplied to the Association in January of each year.

GRIEVANCE PROCEDURE

1. The purpose of this procedure is to secure, at the lowest possible level, an equitable solution to the problems which may arise affecting the terms and conditions of Fire officers and to resolve grievances as soon as possible so as to assure efficiency and promote employees' morale. The parties agree that this procedure shall be kept as informal as may be appropriate.
2. Nothing herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the Department. The Union will explore voluntary resolution where appointed at the lowest level.
3. A grievance is defined as any disagreement between the Fire Officer and the Employer, or between the Association and the Employer, involving the interpretation, application or violation the terms of this agreement, matters of safety affecting or impacting upon employees and administrative decisions affecting employees. Grievances concerning administrative decisions affecting employees may be filed through step 2 (two) of the grievance procedure.
4. The grievance procedure referred to in this Article shall be in addition to and not in derogation of the Civil Service Act or remedies available to the Association or its members by virtue of any statutes of the state of New Jersey or other rules and regulations.
5. The President of the Association of his duly designated representative shall be recognized by the Chief of the Fire Chief of the Fire Department for the purpose of presenting the grievance. The grievance may be so presented with or without the presence or permission of the aggrieved person.
6. The following constitutes the sole and exclusive method for resolving differences between the parties covered by this Agreement, and shall be followed in its entirety unless any step is waived by mutual consent.

The time limits expressed herein shall be strictly adhered to. If any grievance has not been initiated within the time limits specified, then the grievance shall be deemed to have been

abandoned. If the grievance is not processed to the next succeeding step in the grievance procedure within the time limits prescribed thereunder, then the disposition of the grievance at the last preceding step shall be deemed to be conclusive. If a decision is not rendered within the time limits prescribed for decision at any step in the grievance procedure, then the grievance shall be deemed to have been denied. Nothing herein shall prevent the parties from mutually agreeing to extend or contract the time limits for processing the grievance at any step in the grievance procedure.

The aggrieved or the Association shall institute action under this provision within ten (10) calendar days after the event giving rise to the grievance has occurred and the aggrieved person knew or should have known of the event or events upon which the claim is based. An earnest effort shall be made to settle the differences between the aggrieved employee and his immediate supervisor for the purpose of resolving the matter informally. Such grievance must be presented within this time period or such grievance shall be deemed waived.

Step One

The aggrieved or the Association shall institute action under this provision within eight (8) calendar days after the event giving rise to the grievance has occurred and the aggrieved person knew or should have known of the event or events upon which the claim is based. An earnest effort shall be made to settle the differences between the aggrieved employee and his immediate supervisor for the purpose of resolving the matter informally. Such grievance must be presented within this time period or such grievance shall be deemed waived.

Step Two

If no agreement can be reached orally within five (5) calendar days of the initial discussion with the immediate supervisor, the employee or the Association may present the grievance in writing within ten (10) calendar days thereafter to the Executive Director or his designated representative. The written grievance at this step shall contain, without prejudice to either party, the relevant facts and a summary of the preceding oral discussion, the applicable section(s) of

this contract violated, and the remedy request by the grievant.

The Executive Director shall respond, in writing, to the grievance within five (5) calendar days of the submission.

Step Three

If the grievance is not settled through Steps One, and Two, either party shall have the right to submit the dispute to binding arbitration within fifteen (15) days pursuant to the rules and regulations of the Public Employment Relations Commission. An arbitrator, who is a member of the panel of New Jersey Public Employee Relations Commission, will be mutually agreed upon by the parties. The costs for the services of the arbitrator shall be borne equally by North Hudson Regional Fire & Rescue and the North Hudson Fire Officers Association.

Any other expenses, including, but not limited to, the presentation of witnesses, shall be paid by the parties incurring same.

The arbitrator shall be bound by the provisions of this Agreement and the Constitution and Laws of the State of New Jersey, and be restricted to the application of the facts presented to him involved in the grievance. No more than one (1) issue may be submitted to the arbitrator at one (1) time unless arising out of the same facts or agreed in writing by both parties. Multiple grievants regarding the same issue and/or multiple instances of the same issue shall be regarded for the purposes of this section as one (1) issue. The arbitrator shall not have the authority to add to, modify, detract from or alter in any way the provision of this Agreement or any amendment or supplement thereto. The decision of the arbitrator shall be final and binding upon the parties subject to the applicable legal review.

PROBATIONARY PERIOD

All employees hired or promoted during the term of the Agreement shall serve a probationary period pursuant to Department of Personnel rules and regulations. During this probationary period, the Regional reserves the right to exercise its authorities as set forth in Department of Personnel rules and regulations.

HOURS OF WORK

1. Work Day

- A. The workday shall consist of twenty-four (24) consecutive duty hours.
- B. The work schedule shall be twenty-four (24) hours on duty immediately followed by seventy-two (72) hours off duty, which is again followed by twenty-four (24) hours on duty, and so on.

2. Line Fire Officer Starting and Leaving Times

Employees shall start the workday at 7:30 a.m. and shall leave at 7:30 a.m. the following day.

3. Meals

It shall be required of each Fire Officer, irrespective of whether the Fire Officer leaves his assigned duty station during his shift, that the Fire Officer contribute such sum as may be required to the organized meals which are prepared during the normal tour of duty.

4. Staff Fire Officer Starting and Leave Times

The workweek for Fire Officers assigned to a staff position shall consist of a five (5) day week each work day consisting of the hours from 8:00 a.m. to 4:00 p.m. including a one half hour paid lunch.

EXCHANGE OF TOUR DUTY

The Executive Director, or his designee, may grant the request of any two (2) members of the Department, who have completed their probationary period, to exchange tours of duty (24 hour tours) subject to the following conditions:

- (a) Such request shall be submitted in writing by both members seventy-two (72) hours in advance, to be signed and given to the Executive Director, except in case of emergency wherein the wait procedure may be reduced.
- (b) Under no circumstances will employees be permitted to exchange tours of duty if such change would entitle either employee to receive overtime unless approved by the Executive Director.
- (c) All exchanged tours of duty must be paid back within the calendar year taken.
- (d) Because of the potential for disruption to the operation of the fire department, no employee may take more than six (6) mutual swaps during a calendar year without the express permission of the Executive Director or his designee. Each use will be considered one time for each employee.
- (e) Employees seeking or agreeing to exchange a tour of duty must be qualified to perform the duties and responsibilities of the member with whom they intend to swap tours.
- (f) Exchanges of tours of duty will neither be requested nor granted for any period of time during which either Fire Officer involved in the exchange is scheduled for formal training.
- (g) Exchange of tours will be for twelve (12) or twenty-four (24) hour periods, during the normal tour of duty.
- (h) Any member who is scheduled to work and makes arrangements to have another employee work on his behalf, is responsible to have the shift covered. If the time is not covered for any reason, the originally scheduled member will owe the Employer one tour of duty for each tour taken but not covered.

MILITARY LEAVE

1. All employees shall be granted all rights and privileges with respect to military leave pursuant to the provisions of State and Federal Statutes.
2. No employee shall suffer a loss in pay when required to serve his country.

FUNERAL LEAVE

1. Employees shall be granted time off with no loss of pay for the death of an immediate family member commencing from and including the date of death up to and including the day of the funeral not to exceed a maximum of two (2) consecutive twenty-four (24) hour tours.
2. Immediate family member shall be defined to include spouse, child, parents, brother, sister, father-in-law, mother-in-law, grandparents and grandchildren of the employee or other relative residing in the employee's immediate household. In the event of the death of a brother-in-law; sister-in-law, aunt, uncle, niece or nephew, or step-parent, the member shall be entitled to the day of funeral only.

COURT TIME

Court Appearances

An employee required to testify by the Employer during off-duty hours in a legal proceeding in connection with his duties as a Fire Department employee shall be compensated for the time so spent at a rate one and one-half times his normal rate for a minimum of four hours. No additional compensation shall be paid to bargaining unit members who make such appearances while on duty. If an employee is entitled to overtime shall be required to travel to and from any court or administrative bodies as noted in this Article, such travel time shall be considered and included in the computation of the amount of overtime to which the employee is entitled. Legal appearances in interest arbitrations, grievance arbitrations and Public Employment Relations Commission proceedings will not be paid except when the member's testimony is required by the Employer.

LEGAL REPRESENTATION

The Employer will defend and indemnify all employees covered by this Agreement in order to protect them from suits arising out of performance of their duties, provided the acts committed by the employees upon which the damages are based did not constitute fraud, malice, willful misconduct or an intentional wrongdoing.

DEPARTMENTAL INVESTIGATIONS

In an effort to insure that departmental investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

1. The interrogation of a member of the Department shall be at a reasonable hour, preferably when the member of the force is on duty, unless the exigencies of the investigation dictate otherwise.
2. The interrogation shall take place at a location designated by the Fire Chief. Usually it will be at Fire Headquarters or the location where the incident allegedly occurred.
3. The questioning shall be reasonable in length. Time shall be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary.
4. The Department shall permit the member the opportunity to consult with an Association representative at any stage during a proceeding in which the employee reasonably believes may result in disciplinary or criminal charges against that employee upon the request of that employee.
5. Nothing herein shall be construed to deprive the employer or its employees of the ability to conduct routine and daily operations of the Department.
6. Nothing herein shall be construed to deny or restrict either the Department or the employee such rights as they may have under the New Jersey statutes or other applicable laws and/or regulations.

CEREMONIAL ACTIVITIES

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

1. Subject to the availability of same, the Employer will permit a fire department vehicle to be utilized by the Association for the above-referenced funeral service.

PRESERVATION OF RIGHTS

1. All terms and conditions of employment including general orders, rules and regulations, not specifically set forth in this Agreement nor inconsistent with its terms, which have been initiated after regionalization irrespective of prior practice at an individual municipality, will continue and shall not be changed to the detriment of employees within the Bargaining Unit until changed by negotiation with the Association.
2. The Department shall not enter into any Agreement with any employee, or groups of employees covered by this Agreement which in any way conflicts with the terms of this Agreement.
3. The Department agrees to make available to the Association a copy of all general orders issued by the Chief of the Department and/or the Director of the Department at the same time (or earlier if possible) that the general orders are issued to all Fire Officers.

INJURY LEAVE

An employee who is injured in the performance of duty should report, or cause to be reported, the accident to his supervisor as soon as is reasonably possible. The employee should complete a form provided for such injuries when he or his designee is able. If a member is injured on-duty and that injury is serious and/or life threatening, that member will be transported to the nearest appropriate medical facility.

1. Whenever a member of the Fire Department is incapacitated from duty because of an injury sustained in the performance of his duty, he shall be entitled to injury leave with full pay during the period in which he is unable to perform his duties. Typically, that period shall not exceed one (1) year. The time may be extended beyond one (1) year at the sole discretion of the Department.
2. To be eligible for injury leave benefits, both workers compensation benefit and the enhanced benefit to be paid by the Regional, the employee must report his injury as soon as is reasonably possible. The employer will direct the member to one of a panel of physicians to receive prompt and quality care. Any employee who was sent to the nearest appropriate medical facility must report to an approved panel physician for any further treatment or evaluation if applicable. A Fire Officer injured in the line of duty, reserves the right to be treated by a physician and/or surgeon of his own choice, whose fees will be paid by the Department, provided authorization is first obtained from the Department, which authorization shall not be unreasonably withheld. A Fire Officer who is treated by his own physician may be required to present a certificate indicating his continued inability to return to work from time to time. Nothing herein shall prevent the Regional from independently evaluating the medical condition of an employee injured in the line of duty.
3. If any member in rendering assistance in another municipality shall suffer any casualty or death, he or his designee or legal representative shall be entitled to all salary, pension rights, workmen's compensation and any other benefits as if such casualty or death occurred in the performance of his duties for the North Hudson Regional Fire and Rescue Department.

JURY DUTY

Employees shall be granted time necessary for Jury Duty.

LEAVE OF ABSENCE/EMERGENCY LEAVE

Emergency Leave

Employees may be granted emergency leave, with or without pay, for the serious illness requiring hospitalization in the immediate family including childbirth, necessitating the employee's presence at the discretion of the Executive Director, which discretion shall not be unreasonably or arbitrarily exercised. Paid leave shall be limited to one tour annually.

For the purposes of this Article, immediate family is defined as spouse, child, parents, brother, sister, father-in-law and mother-in-law, or any other member residing in the household.

Leave of Absence

An employee desiring a leave of absence from his employment shall apply for same in writing. An employee must have completed three (3) full years of service to be eligible. Such application shall provide the reason that the leave is requested. Upon a showing of good cause, a leave of absence of up to one hundred eighty (180) days may be granted at the discretion of the Executive Director, which discretion shall not be unreasonably or arbitrarily exercised. Such leave of absence shall be without pay, but the employee shall retain all seniority rights.

OFF DUTY ACTION

Any action within the State of New Jersey taken by a member of the Department on his time off, which would have been proper action if taken by the employee on active duty with the NHRF&R, shall be considered proper Fire Department action, and the employee shall have all of the rights and benefits concerning such action as if he were then on active duty. This excludes an employee regularly performing duties as a member of a volunteer fire company.

OUT OF TITLE WORK

When an employee is assigned by competent authority to work out of title at a rank higher than his regular rank, beyond two (2) consecutive tours, compensation shall be provided upon appointment to act in the higher rank, which compensation shall be an additional one-half (1/2) the salary rate between the highest rate for the employee's permanent rank and the lowest rate for the rank in which the employee is acting on the existing salary schedule.

CLOTHING AND UNIFORM ALLOWANCE

The employer agrees to pay all employees covered by this agreement the amount of six hundred and fifty (\$650.00) dollars per year as a clothing maintenance allowance. This payment is to be made on or before July 1st of each year commencing July 1, 2002.

The Employer agrees to furnish, at no cost to the employee and assure the use of, required protective clothing, and equipment as set forth in N.J.A.C. 12:100 et seq.

Employees must return all turn out gear and other equipment issued by the Regional upon retirement or termination.

If a Fire Officer loses equipment due to negligence, such Fire Officer shall be charged with the cost of replacement. Intentional damage to equipment shall result in discipline and charge for the cost of equipment.

Clothing lost, destroyed or damaged during the course of duty shall be replaced at the Department's expense. The employee, absent extenuating circumstances, must report any damaged clothing to the fire headquarters within twenty-four (24) hours. Employees must present damaged clothing, helmet, boots, coats or gloves in order to verify loss.

Whenever the Employer determines that it desires to change the uniform or part thereof, it shall be the Employer's obligation to provide to each employee such modified or changed uniform free of charge. Utilization of this paragraph shall not diminish the clothing maintenance allowance set forth in this agreement.

FACILITIES/SANITARY AND SAFETY CONDITIONS

North Hudson Regional Fire & Rescue desires to maintain a safe place of employment for all Fire Officers, and to that end management shall make all reasonable provisions necessary and in accordance with the laws of New Jersey for the safety of employees in the performance of their work. The Regional shall provide equipment as approved by New Jersey's statutory requirement for all fire personnel.

1. All sanitary facilities and equipment in each firehouse including, but not limited to, toilets, showers, and washbasins shall be furnished and maintained in good working order by the Department.
2. The Department agrees to provide employees with a reasonable and safe place for their work efforts and further agrees to keep all equipment in safe and good operating condition so as to insure the safety of the employees.

DRUG AND ALCOHOL TESTING

The Regional may administer drug and alcohol testing policy and procedures as described in Appendix A, which is incorporated herein by reference.

OUTSIDE EMPLOYMENT

1. Employees shall be entitled to engage in any lawful activity and obtain any lawful work while off-duty.
2. It is understood that full-time employees will consider their position with the Regional as their primary employment. Any outside employment or activity must not interfere with the employee's efficiency in his position with the Regional and must not constitute any conflict of interest.
3. An employee who is on sick leave or a compensable work-related injury leave may not work at any other employment during such leave.

PERSONNEL FILES

1. A separate personnel file shall be established and maintained for each employee covered by this Agreement. Personnel files are confidential records and shall be maintained by the Administration.
2. Any employee in the bargaining unit may review their own personnel file provided reasonable notice by written request is made to the Regional. Each review shall be conducted in the presence of management personnel and every employee shall be required to sign an entry record on the occasion of his review.
3. Whenever a written complaint concerning an employee or his actions is to be placed in his personnel file, a copy shall be given to said officer, and he shall be given the opportunity to rebut if he so desires, in writing, within fifteen days and said rebuttal shall be placed in his file.

NON-DISCRIMINATION

In accordance with applicable state and federal law, neither the Regional nor the Association shall discriminate against any employees covered by this agreement because of race, color, sex, religion, national origin, or Association membership.

FULLY BARGAINED PROVISIONS

This Agreement represents and incorporates the complete and final understanding and settlement by the parties on all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such issue, whether or not covered by this Agreement. This provision cannot be construed to waive the Association's statutory right to negotiate over issues which flow from the Regional's right to propose new rules, modifications of existing rules governing working conditions.

ASSIGNMENTS AND TRANSFERS

The assignment and transfer of Fire Officers shall be solely the responsibility of the Executive Director. It shall be understood nothing shall prohibit any employee from submitting, through proper channels, a written request for transfer to a new or vacant position for which that employee is qualified.

SEVERABILITY AND SAVINGS

If any provision of this Agreement or any application of this Agreement to any employee, member or group of employees or members is held to be invalid by operation of law, by any Court, or any other tribunal of competent jurisdiction, then such provision and/or its application shall be deemed inoperative; however, all other provisions and applications contained herein shall continue in full force and effect, and shall not be effected thereby.

NO WAIVER

Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement or exercise one's rights pursuant thereto shall not be deemed a waiver thereof. This Agreement is not intended and shall not be construed as a waiver of any right or benefit to which the parties herein are entitled. This Agreement may only be modified or changed by a written amendment and signed by both parties.

DURATION OF AGREEMENT

This Agreement shall have a term from July 1, 1999 through June 30, 2004.

If the parties have not executed a successor agreement by June 30, 2004, then this Agreement shall continue in full force and effect until a successor agreement is executed.

Negotiations for a successor agreement shall be in accordance with the rules of the Public Employment Relations Commission.

PROMOTIONS AND VACANCIES

PROMOTIONS

The Regional shall attempt to maintain a New Jersey Department of Personnel list from which appointment and promotional vacancies shall be filled in accordance with New Jersey Department of Personnel Rules and Regulations.

ACTING PAY

If it is necessary to appoint a member to act or to be in charge due to a vacancy, the member serving in such temporary rank shall be paid at the rate for the rank in which he is temporarily serving, after thirty (30) consecutive calendar days of satisfactory service within that rank. Thereafter payment shall be retroactive to his first day of service in the higher capacity.

SICK LEAVE & TERMINAL LEAVE

Effective January 1, 2003, sick leave may be utilized by employees when they are unable to perform their work by reason of personal illness, accident, or exposure to contagious disease. Sick leave with pay shall be accumulated as follows: Upon hire, each employee shall be entitled to a bank of 120 hours. Commencing on January 1st of the following year, the employee will be credited with an additional 120 hours during a Fire Officer's first five years of service. After five (5) years through fifteen (15) years of service, paid sick leave shall be set at a bank of 180 hours or (7.5) 24-hour tours. After fifteen (15) years of service, Fire Officers shall receive a sick leave bank of 240 hours. An employee who has called in sick leave and recovers sufficient to work may be permitted to return to work after eight (8) hours. The decision to permit an employee to complete a tour of duty remains within the sole discretion of the Executive Director.

Evidence in the form of a physician's certificate shall be required as proof of illness for any sick leave paid for an absence of more than one tour of duty. Evidence in the form of a physician's certificate may be required whenever there is reason to believe that sick leave is being abused. Such certificate shall provide a date of treatment, diagnosis, and if appropriate, whether the employee is able to return to modified duty, and a date the employee is expected to be released back to his normal job responsibilities.

The Employer reserves the right to send an employee, at the Regional's expense, for a physical, neurological, psychiatric, or other examination to be performed by a physician, whenever there is a request for sick leave or a request to return from sick leave.

Employees on extended medical leave shall contact the office of the Chief on a weekly basis.

Sick Leave Use Incentive

Effective January 1, 2003, an employee who has taken no sick days during the calendar year shall receive a stipend of \$500.00 to be paid on or before February 1st of the following year.

During protracted periods of illness or disability of an employee, the Department head may require interim reports on the condition of the patient, from the attending physician and/or a Department medical physician. When under medical care, employees are

expected to conform to the instructions of the attending physician if they wish to qualify for salary payment during such period of illness or disability.

If the employee is absent from work for reasons that entitle him to sick leave, the Department head or his designee representative shall be notified as early as possible prior to the commencement of his or her tour of duty.

Terminal Leave

All unused accumulated sick and vacation leave days shall be put into a bank to be used as Terminal Leave. There shall be no set limit to the number of days which an employee can accumulate in his Terminal Leave bank but he shall only be paid for the purpose of terminal leave in accordance with the caps and rate system established in this Article.

For all employees originally employed by the municipalities of Guttenberg, North Bergen, Weehawken, West New York, or Union City, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall receive payment for unused accumulated sick leave and vacation days as provided in the municipalities' collective bargaining agreements at the time of Regionalization. Terminal leave benefits for such employees shall be based upon leave accumulated with the Regional as well as with any predecessor department.

For all employees employed by the Regional after regionalization, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall 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. Those employees who work less than a twenty-four hour day shall have a rate system adjusted proportionately in relation to the above.

VACATION

Effective January 1, 2003, for Fire Officers working a 24 hour tour, paid vacation leave shall be as follows:

24 Hour Tours of Duty	
FO3	12
FO2	12
FO1	11

Effective January 1, 2003, for Fire Officers working an 8 hour tour, paid vacation leave shall be as follows:

8 Hour Tours of Duty	
FO3	32
FO2	32
FO1	30

The Department shall set a vacation schedule for line companies and staff, after consultation with the Association president. Vacation leave may be taken in 12 as well as 24 hour blocks.

In the case of the death of a member, all vacation due him or her shall be paid to his/her estate.

In the event an employee's sick leave and vacation time coincide, he shall be charged with sick leave only, and may take his accrued vacation time subsequently. In the event that an employee is on vacation and becomes ill, the scheduled vacation leave may not be converted to sick leave and the employee will be charged for vacation time rather than sick time for the remainder of the scheduled vacation leave.

Vacation time earned may not be accumulated unless an employee was prevented by the Regional from taking scheduled vacation time due to departmental needs or disability. In either event, the employee may bank such vacation time for no more than one year. This provision shall not prevent the banking of vacation time for the purposes of placing such time in the terminal leave bank.

Employees covered by this Agreement who were previously employed by Town of West New York Fire Department shall be

entitled to maintain all previously banked compensatory and accumulated time which existed as of the time of the regionalization

Any Fire Officer who gets involuntarily transferred shall have the option to keep his previously approved vacation or to use any open vacation slot in the new-transferred position. If the Fire Officer chooses to keep his previously approved vacation period, it cannot be denied even if it creates an overtime situation.

HOLIDAYS

1. There shall be 112 hours of holiday pay per annum effective January 1, 2003.
2. Payment for all holidays shall be considered as added to an employee's base salary.

OVERTIME

Overtime Rate

Overtime shall be paid for all hours worked in addition to the employee's normal schedule hours as well as entitlements under the Fair Labor Standards Act (FLSA). The overtime rate shall be calculated by dividing the employee's annual salary, including all payments added to base pay, by 2080 hours times one and one-half (1 ½).

Overtime Call in

It is agreed that an overtime roster will be maintained by the Union. In the event a need arises to engage an employee on an overtime basis, the officer in charge shall request the appropriate Union official to call employees covered by this Agreement in or order of seniority. The overtime roster is not to be used for fires or emergencies.

Mandatory Off-Duty Detail

1. All mandatory off-duty details such as, but not limited to, parades, funerals, and special events, shall be considered as overtime.

Off Duty Testimony

When an employee is required to testify in a legal proceeding in connection with his duties in the fire department, the employee shall be compensated for the time so spent at a rate of one and one-half times his normal rate for a minimum of four hours.

Recall Compensation

The compensation required to be paid to employees who have been recalled to duty shall be a minimum four (4) hour's overtime pay, at the rate of time and one-half (1 ½). The four (4) hour minimum shall not apply to employees held over following the termination of their regular shift.

Early Call-In

Any employee required to report to duty prior to their assigned start time shall be guaranteed a minimum of two (2) hours at the overtime rate.

Holdover Pay

Where a holdover beyond an employee's regular shift extends beyond fifteen (15) minutes, such employee will be compensated at time and a half for a one (1) hour minimum and thereafter paid for actual time worked in quarterly increments at time and one half.

Compensation for Off-Duty Training

When required by the Regional to attend training for the purpose of retaining certification of qualifications, or continuing education and training, employees will be compensated for off-duty training at the overtime rate. 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.

EDUCATION INCENTIVE

Educational incentives shall be provided for all unit employees based upon the standards below:

1. Fire Officers employed by the Regional who were previously employed in the municipal departments and, as of the date of this award, have commenced matriculation in higher education for credit, shall retain all aspects of education incentives, if any, previously provided in the labor agreements in those departments.
2. Fire Officers employed by the Regional who were previously employed in the municipal departments and, as of the date of this award, have not commenced matriculation in higher education for credit, shall receive education incentive in a fashion identical to Fire Officers hired by the Regional on or after regionalization.
3. Fire Officers hired by the Regional on or after regionalization shall receive \$750 per year for an A.A. degree at an accredited institution or \$1,250 for an A.A. degree at an accredited institution for fire science or fire science technology.
4. Fire officers hired by the Regional on or after regionalization shall receive \$1,500 per year for a B.A. degree at an accredited institution or \$2,500 for a B.A. degree at an accredited institution for fire science or fire science technology.
5. Educational compensation as provided herein shall be included in base salary and paid in equal installments included in the members bi-weekly salary.

SALARIES

1. Fire Officers shall receive salary increases pursuant to the following salary schedule with increases retroactive to the effective dates reflected on the following salary schedule. The new salary schedule for all of the aforementioned Fire Officers shall be entitled "all Fire Officers employed by the NHFRD who were previously employed by the municipalities of Union City, Weehawken, West New York, North Bergen and Guttenberg at the time of regionalization."

NORTH BERGEN

OLD RANK	NEW RANK	7/1/99	1/1/00	7/1/00	1/1/01	7/1/01	1/1/02	7/1/02	1/1/03	7/1/03	1/1/04	4/1/04
Lt	FO1	63,322	64,979	66,636	68,293	69,950	71,607	73,264	74,921	76,578	78,237	81,906
Cpt	FO1	73,043		75,234		77,491		79,816		82,211		89,906
BC	FO2	83,998		86,518		89,114		91,787		94,541		101,074
DC	FO3	96,599		99,497		102,482		105,556		108,723		115,725

WEST NEW YORK

OLD RANK	NEW RANK	7/1/99	1/1/00	7/1/00	1/1/01	7/1/01	1/1/02	7/1/02	1/1/03	7/1/03	1/1/04	4/1/04
Lt	FO1	63,919	65,510	67,101	68,692	70,283	71,874	73,465	75,056	76,647	78,237	81,906
Cpt	FO1	75,111		77,365		79,686		82,076		84,538		89,906
BC	FO2	87,881		90,518		93,233		96,030		98,911		101,074
DC	FO3	102,820		105,905		109,082		112,355		115,725		115,725

WEEHAWKEN

OLD RANK	NEW RANK	7/1/99	1/1/00	7/1/00	1/1/01	7/1/01	1/1/02	7/1/02	1/1/03	7/1/03	1/1/04	4/1/04
Lt	FO1	66,324	67,648	68,792	70,296	71,620	72,944	74,268	75,592	76,916	78,237	81,906
Cpt	FO1	73,534		75,740		78,013		80,353		82,764		89,906
BC	FO2	85,983		88,562		91,219		93,956		96,775		101,074
DC	FO3	96,300		99,189		102,165		105,230		108,387		115,725

UNION CITY

OLD RANK	NEW RANK	7/1/99	1/1/00	7/1/00	1/1/01	7/1/01	1/1/02	7/1/02	1/1/03	7/1/03	1/1/04	4/1/04
Lt	FO1		69,439	71,598		73,746		75,958		78,237		81,906
Cpt	FO1		79,880	82,277		84,745		87,287		89,906		89,906
BC	FO2		89,803	92,497		95,272		98,130		101,074		101,074
DC	FO3		99,725	102,717		105,798		108,972		112,242		115,725

2. There shall be a three step schedule for each Fire Officer rank commencing April 1, 2004 as reflected in the salary step schedule which appears below the new salary schedule for all Fire Officers. Effective April 1, 2004, all step movement on the three step salary schedules shall take place one full year after service in each rank. All Fire Officers previously holding the rank of Lieutenant will be placed on the first step of the three step salary schedule for FO1 on April 1, 2004 and movement on that schedule will be after one full year of service on this schedule. On April 1, 2004, all current Captains shall be placed at the top step of the Fire Officer 1 salary guide, all current Battalion Chiefs shall be placed at the top of the Fire Officer 2 salary guide, and all current Deputy Chiefs shall be placed at the top step of the Fire Officer 3 salary guide. All Fire Officers promoted on or after April 1, 2004 shall be placed on Step 1 of the guide for the position to which they are promoted and shall progress to the next step after one year in service at each step.

Rank	Step	Effective April 1, 2004
FO1	1	81,906
	2	85,906
	3	89,906
FO2	1	93,074
	2	97,074
	3	101,074
FO3	1	107,725
	2	111,725
	3	115,725

3. The specific formulae for application and implementation of the salary schedules shall be as described in the award on pages 282 through 286. I incorporate that formulae by reference herein.
4. Salary will be paid in regular bi-weekly installments on the Wednesday of each week. If a holiday falls on a Wednesday, then the pay will be distributed on the Tuesday of said week.

5. The Department shall establish direct deposit and every effort shall be made to have checks available at 8:00 a.m. on payday.
6. Effective January 1, 2003, the hourly rate shall be computed by dividing the employees annual compensation by 2080 hours. Effective January 1, 2003, annual compensation for the purposes of determining the hourly rate shall include base salary, longevity, holiday pay, educational incentive, if applicable, and service differential pay. These items added to base salary shall be considered part of base salary and paid on a periodic basis.
7. Any provision in the of the prior agreements which added compensation to base pay related to the average 42 hour normal workweek or guaranteed overtime shall continue until April 1, 2004, the date of unification.

LONGEVITY & SERVICE DIFFERENTIAL

Fire officers previously employed by member municipalities shall receive the following longevity schedule effective January 1, 2003 for service accruing through December 31, 2002:

Beginning with 5 th year of Service	4% of base annual salary
Beginning with 8 th year of Service	6% of base annual salary
Beginning with 12 th year of Service	8% of base annual salary
Beginning with 16 th year of Service	10% of base annual salary
Beginning with 20 th year of Service	12% of base annual salary
Beginning with 25 th year of Service	14% of base annual salary

Fire officers previously employed by Union City who are receiving or will have earned 14% or more than 14% through December 31, 2002 shall retain the longevity percentage they would enjoy at that time but the percentage received will not increase pursuant to the former schedule. I also award a continuation of the inclusion of longevity benefits as added to base salary.

Fire officers who were employed by the Regional on or after regionalization and whose overall seniority did not include prior service with the member municipal departments, shall be covered by the following longevity provision:

7 to 8 years	2% of base annual salary
9 to 11 years	3% of base annual salary
12 to 14 years	4% of base annual salary
15 to 19 years	5% of base annual salary
20 to 22 years	6% of base annual salary
at the completion of 23 years of service	7% of base annual salary

The longevity payments set forth in this section are not cumulative and shall be included for the purpose of base pay.

For those Fire Officers previously employed by North Bergen and/or Weehawken who are presently receiving the service differential or would earn a different service differential as of December 31, 2002, I award a retention of that service differential at the percentage level earned by that date but I do not award a continuation of that benefit at any higher percentage beyond that which was earned as of December 31, 2002. For those employees eligible for service differential, the amount shall be in addition to base pay.

I do not award an expansion of service differential to Fire Officers who were employed in those municipal departments whose agreements contain no service differential for those Fire Officers hired on or after regionalization nor award this benefit for those employees in North Bergen and Weehawken who will not have earned a service differential benefit as of December 31, 2002. Except for those firefighters who are presently receiving the service differential or would earn a service differential as of December 31, 2002, reference to service differential shall be deleted from the agreement.

INSURANCE

Effective January 1, 2003, the Employer will provide health-care insurance protection under the New Jersey State Health Benefits Program (SHBP) for all unit employees and their dependents or a health insurance plan providing benefits equal to or better than the NJSHBP.

Effective January 1, 2003, the Employer will provide a Prescription Drug Program for all unit employees and their dependents which shall require a five dollar (\$5.00) co-payment for brand name drugs, a three dollar (\$3.00) co-payment for generic drugs and zero (\$0) co-payment for mail order drugs.

The Employer shall make full payment in the above health care insurance protection on behalf of all employees including those members who are on authorized sick leave and/or injured in the line of duty.

DENTAL INSURANCE

Effective January 1, 2003, the Employer shall provide a dental plan with dental insurance for all unit employees and their dependents. The Plan will have a deductible of \$25 for individuals and \$75 maximum deductible for family coverage. The Plan shall cover 80% of U.C.R. up to an annual cap of \$1,500 per covered individual per year for all eligible charges. The Plan shall also provide 100% coverage for orthodontics with a lifetime cap of \$1,500 for each covered individual.

PRESCRIPTION EYEGLASS

The Employer agrees to provide a Prescription Eyeglass Plan for unit employees and their dependents up to a maximum of \$125 per year per covered individual. Coverage shall include an annual eye examination, including glaucoma tests and the costs of glasses and/or contacts.

RETIREE COVERAGE

Effective January 1, 2003, firefighters (including dependents) who retire subsequent to the change in health insurance carrier employer-paid health insurance and prescription drug coverage as set forth in the SHBP. These retirees shall also receive the dental

and prescription eyeglass coverage in effect at the time of their retirement.

For unit employees who have retired prior to the change in health insurance carrier, I award a continuation of retiree health insurance and other insurance coverage which they are currently receiving at a level pursuant to the appropriate to the municipal collective negotiations agreements in effect prior to the issuance of this award.

For employees employed prior to the effective date of regionalization, I award the following eligibility requirements. For employees to be eligible to receive retiree insurance, the member:

1. Must retire on a disability pension, or
2. Must have 25 or more years of service credit in a State or locally administered retirement system; and
3. The employee must have a period of service up to 20 years with the employer at the time of retirement except that members who were transferred from the Municipal departments. The time the member had with the Municipal Departments shall be considered time with the North Hudson Regional Fire and Rescue as if that service was performed for this employer for the purposes of this Article.

For employees hired on or after the effective date of regionalization, I award the following eligibility requirements:

1. For retirees retiring from a job-related disability with five (5) years of credited service in PFRS.
2. For retirees retiring from a non-job related disability with twenty (20) years of credited service in PFRS.
3. For all retirees with at least twenty-five years of credited service in PFRS.

MISCELLANEOUS BENEFIT PROVISIONS

The Employer may change insurance plans and/or carriers or self insure upon sixty (60) days prior notice to the Union so long as, in the aggregate, the new plan provides "equal or better" benefits than the plan or program in existence at the expiration of this Agreement.

The Regional shall continue to provide reimbursement for guaranteed term life insurance only to those employees who are receiving this reimbursement as of the date of this award.

PENSIONS & RETIREMENT BENEFITS

1. The Employer shall provide pension retirement benefits to employees covered by this Agreement pursuant to provisions of the statutes and laws of the State of New Jersey. The Regional shall do everything required by it, pursuant to law, to secure pensions for all qualified employees.
2. Pensions and insurance coverage shall be the same for an employee who is injured or killed while on duty with the Regional and who, while acting within the scope of his employment, is rendering aid to a neighboring community, as though the injury or death occurred within the territorial limits of the Regional.
3. The Employer shall continue to make necessary payments to, and on behalf of, an employee who is on sick leave and/or has been injured in the line of duty and within the scope of his employment as though said employee remained on active duty.

Employees previously employed by North Bergen who had at least 20 years of continuous service with North Bergen at the time of regionalization and who retire between the 25th and 26th year of continuous service with North Bergen and the Regional shall receive the following compensation:

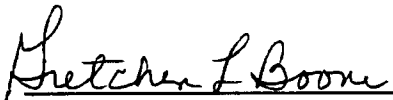
Deputy Chief	\$12,000
Lieutenants	\$ 8,500
Captains	\$10,000
Battalion Chiefs	\$11,000

Dated: September 30, 2002
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 30th day of September, 2002, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 8/13/2003