

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

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In the Matter of Interest Arbitration Between:

**EVESHAM TOWNSHIP FIRE DISTRICT NO. 1,**  
**“Fire District or Employer”**

- and -

Docket No. IA-2020-003

**IAFF LOCAL 4687**  
**“IAFF or Association.”**

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**Before:** Brian W. Kronick, Esq., Interest Arbitrator

Appearances:

**For the Fire District:**

Carmen Saginario, Esq.  
Capehart Scatchard

**For the IAFF:**

James Katz, Esq.  
Spear Wilderman, P.C.

## **PROCEDURAL HISTORY**

Evesham Township Fire District No. 1 (the “Fire District or Employer”) and IAFF Local 4687 (the “IAFF or Association”) are parties to a Collective Negotiations Agreement with an effective term of January 1, 2014 through December 31, 2018 (the “Agreement”).

The parties met and engaged in negotiations for a successor collective negotiations agreement on September 24, 2018, October 17, 2018, November 26, 2018, January 31, 2019, July 25, 2019, and September 4, 2019. On September 12, 2019, the Fire District filed the instant Petition to Initiate Compulsory Interest Arbitration (the “Petition”) with the New Jersey Public Employment Relations Commission (“PERC”) pursuant to the Police and Fire Interest Arbitration Reform Act, N.J.S.A. 34:13A-16 (the “Act”). On September 17, 2019, the IAFF filed its response to the Petition. On September 16, 2019, PERC randomly appointed me as Interest Arbitrator. On October 22, 2019 a mediation session was held as required by the Act and a second mediation session was held on November 4, 2019. Since a settlement was not achieved through mediation, Interest Arbitration hearings were scheduled for November 25, 2019.

The parties submitted Final Offers on November 18, 2019 and could amend their Final Offers up to the close of hearing on November 25, 2019. At the hearing, both parties were represented by competent and professional counsel and each had an opportunity to present evidence and offer testimony. The Fire District submitted a binder containing twenty-five (25) exhibits. The Fire District also offered testimony from Maureen P. Mitchell, Fire District Business Manager (“Mitchell”). The IAFF submitted a binder containing twenty-five (25) exhibits, an “Economic Report” and three collective negotiation agreements from neighboring municipalities for a total of twenty-nine (29) exhibits. The IAFF also offered testimony from Firefighter Ryan Brinker (“Brinker”), and the Economic Report and testimony from Dr. Raphael Caprio, Ph.D., IAFF Financial Expert (“Caprio”). The testimony from all the witnesses was highly credible and the financial exhibits were detailed in outlining the Fire District’s budget and finances. The parties were given until Monday December 9, 2019 to submit post-hearing briefs.

This proceeding is governed by the Police and Fire Interest Arbitration Reform Act as set forth in N.J.S.A.34:13A-16 through N.J.S.A.34:13A-16.9 as amended on June 24, 2014 by P.L. 2014, c.11 (the “Act”). The Act requires the use of conventional arbitration. The strict limits on the amount of base salary increases have sunset and this agreement is not subject to those limitations. Still, the Award must be in compliance with the Act, the appropriations and tax levy limitations in P.L. 1976, c. 68 (C. 40A:4-45, *et. seq.*) and Section 10 of P.L. 2007, c. 62 (C. 40A:4-45:45) and, most importantly, must be in the interest and welfare of the public. This Interest Arbitration Award is issued in accordance with the 16g interest arbitration criteria to the extent deemed relevant. See N.J.S.A. 34:13A-16.7(b) and N.J.S.A. 34:13A-16g.

Pursuant to P.L. 2014, c. 11, the arbitrator has 90 days from appointment, or by December 16, 2019, in which to render an award. This has resulted in a greatly compressed time period for issuance of the Award.

## **THE FINAL OFFERS**

In accordance with the Act, each party submitted a Final Offer (the "Final Offer"). These Final Offers are set forth as follows:

### **FIRE DISTRICT FINAL OFFER**

The Final Offer of the Fire District is as follows:

1. Salary Guide for all Firefighter/EMT's (below) for the duration of the agreement. Note: New hires (after 12/31/18) "top out" at 20th step (\$100K) on the guide. Elimination of FF/Inspector Title for new hires (hired after 12/31/18). New hires (after 12/31/18) receive \$3000 stipend if they perform inspection services.
2. EMT only guide (below).
3. Duration: five years (2019 through 2023).
4. Art. 5, para. F, pg. 6: Eliminate Shift Differential
5. Art. 9 para. C, pg. 9: Sick leave upon retirement to mirror existing law (employees hired after 5/22/10 capped at \$15,000).
6. Art. 9, Para. C: employees terminated as a result of disciplinary action are not entitled to payment for any accumulated sick leave.
7. Sick and Vacation upon Retirement: pro-rated in year of retirement (e.g., retire on April 1, paid for 1/4 of granted leavetime).
8. Catastrophic illness policy (same as FMBA)
9. "Deputy Chief" language changed to "Department Head."
10. Delete Drug and Alcohol policy in favor of district-wide policy.
11. Article 37, p. 24: Fire Investigator clause: eliminate paragraph D (this is management prerogative as to how the District assigns personnel).
12. Article 21, Training and Education, p. 16: limit to one degree per level (district only pays for one Bachelors, one Masters, etc.). Also add grade scale: Grade A (100%); B (90%); C (80%); D/F/withdrawal (0%). This is consistent with FMBA agreement.
13. Article 25, p.20: Agency Shop. Revise language to be consistent with Janus decision. Line 4, after "Association" add "only if said employees authorize such deductions in writing."
14. Art. 15, p.12: Delete opt-out language since is non-negotiable under the law.

### District Proposed FF/EMT

Step	Salary	Annual Inc.	% Inc.
New Hire *	44,000.00		
Start 1/1 following year	45,000.00	1,000.00	2.27%
2	48,000.00	3,000.00	6.67%
3	51,000.00	3,000.00	6.25%
4	54,000.00	3,000.00	5.88%
5	57,000.00	3,000.00	5.56%
6	60,000.00	3,000.00	5.26%
7	63,000.00	3,000.00	5.00%
8	66,000.00	3,000.00	4.76%
9	69,000.00	3,000.00	4.55%
10	72,000.00	3,000.00	4.35%
11	75,000.00	3,000.00	4.17%
12	78,000.00	3,000.00	4.00%
13	81,000.00	3,000.00	3.85%
14	84,000.00	3,000.00	3.70%
15	87,000.00	3,000.00	3.57%
16	90,000.00	3,000.00	3.45%
17	93,000.00	3,000.00	3.33%
18	96,000.00	3,000.00	3.23%
19	99,000.00	3,000.00	3.13%
20	100,000.00	1,000.00	1.01%
21	104,500.00	4,500.00	4.50%
22	109,000.00	4,500.00	4.31%
23	113,500.00	4,500.00	4.13%
24	118,000.00	4,500.00	3.96%
25	121,000.00	3,000.00	2.54%

\*New Hires after 12/31/18 will max out at Step 20

\* All advance on 1/1 next year, not anniversary

One Title FF/EMT

**District Proposed EMT Only**

<b>Step</b>	<b>Salary</b>	<b>Annual Inc.</b>	<b>% Inc.</b>
New Hire *	40,000.00		
1/1 Following	42,000.00	2,000.00	5.00%
2	44,250.00	2,250.00	5.36%
3	46,500.00	2,250.00	5.08%
4	48,750.00	2,250.00	4.84%
5	51,000.00	2,250.00	4.62%
6	53,250.00	2,250.00	4.41%
7	55,500.00	2,250.00	4.23%
8	57,750.00	2,250.00	4.05%
9	60,000.00	2,250.00	3.90%
10	62,250.00	2,250.00	3.75%
11	64,500.00	2,250.00	3.61%
12	66,750.00	2,250.00	3.49%
13	69,000.00	2,250.00	3.37%
14	71,250.00	2,250.00	3.26%
15	72,750.00	1,500.00	2.11%
16	74,250.00	1,500.00	2.06%
17	75,750.00	1,500.00	2.02%
18	77,250.00	1,500.00	1.98%
19	78,750.00	1,500.00	1.94%
20	80,250.00	1,500.00	1.90%
21	81,750.00	1,500.00	1.87%
22	83,250.00	1,500.00	1.83%
23	84,750.00	1,500.00	1.80%
24	86,250.00	1,500.00	1.77%
25	87,750.00	1,500.00	1.74%

\* All advance on 1/1 next year, not anniversary

## **IAFF FINAL OFFER**

The IAFF Final Offer is as follows:

1. Duration. Five (5) year contract from January 1, 2019 through December 31, 2023.
2. Article 4 Schedule-Revise contractual work schedule language to correspond to the current schedule worked by bargaining unit members, such that the regular work schedule shall be 168 hours, with an average of 42 weekly hours during each 28-day period.
3. Article 5 Overtime. Revise Overtime Article to provide that in the event an employee works in excess of his normal hours of duty, he/she should be entitled to be paid either compensation or compensatory time at the rate of 1.5 times the hourly rate. Currently compensatory time is unavailable.
4. Article 8, Vacation. Amend Vacation language Article to establish a time period for management to approve or disapprove vacation leave.
5. Article 18, Salaries. The salary guides for both Firefighter/EMT and Firefighter/Inspector shall be modified as follows: It shall be a static guide on Steps 1 through 9 from January 1, 2019 through December 31, 2023. All Firefighter/Inspectors and Firefighter/EMTs eligible for step movement shall do so each year of the contract. There shall be no cost of living increase for any Firefighter/Inspector or Firefighter EMT on any steps of either guide in 2019. Both salary guides shall be adjusted by 1.5% cost of living increase, effective January 1, 2020, 2021, 2022, and 2023, at Step 10 and higher.
6. Article 18, Salaries - Revise Salaries Article to provide that each bargaining unit member that resides within the Township of Evesham is entitled to a residential stipend payment of 1% of annual salary each year.
7. Article 24, Acting Out-of-Title - Revise Article such that acting out-of-title pay for any employee working in the capacity of a supervisor as ordered by a superior, shall be increased from \$35 to \$60 per shift, after serving for three (3) hours during the shift. Only employees that meet the job description for Lieutenant shall be qualified to receive acting out-of-title pay.

# PROPOSED INSPECTOR GUIDE: 2019 THROUGH 2023

Year/Step	2019	2020	2021	2022	2023
1	\$56,797.79	\$56,797.79	\$56,797.79	\$56,797.79	\$56,797.79
2	\$63,818.72	\$63,818.72	\$63,818.72	\$63,818.72	\$63,818.72
3	\$70,839.64	\$70,839.64	\$70,839.64	\$70,839.64	\$70,839.64
4	\$77,860.57	\$77,860.57	\$77,860.57	\$77,860.57	\$77,860.57
5	\$84,881.50	\$84,881.50	\$84,881.50	\$84,881.50	\$84,881.50
6	\$90,645.29	\$90,645.29	\$90,645.29	\$90,645.29	\$90,645.29
7	\$95,565.51	\$95,565.51	\$95,565.51	\$95,565.51	\$95,565.51
8	\$103,616.77	\$103,616.77	\$103,616.77	\$103,616.77	\$103,616.77
9	\$116,866.46	\$116,866.46	\$116,866.46	\$116,866.46	\$116,866.46
10	\$116,866.46	\$118,596.96	\$120,353.41	\$122,136.21	\$123,945.76
11	\$116,866.46	\$118,596.96	\$120,353.41	\$122,136.21	\$123,945.76
12	\$116,866.46	\$118,596.96	\$120,353.41	\$122,136.21	\$123,945.76
13	\$116,866.46	\$118,596.96	\$120,353.41	\$122,136.21	\$123,945.76
14	\$117,981.11	\$119,728.33	\$121,501.75	\$123,301.78	\$125,128.81
15	\$117,981.11	\$119,728.33	\$121,501.75	\$123,301.78	\$125,128.81
16	\$117,981.11	\$119,728.33	\$121,501.75	\$123,301.78	\$125,128.81
17	\$117,981.11	\$119,728.33	\$121,501.75	\$123,301.78	\$125,128.81
18	\$117,981.11	\$119,728.33	\$121,501.75	\$123,301.78	\$125,128.81
19	\$119,095.76	\$120,859.70	\$122,650.10	\$124,467.35	\$126,311.86
20	\$119,095.76	\$120,859.70	\$122,650.10	\$124,467.35	\$126,311.86
21	\$119,095.76	\$120,859.70	\$122,650.10	\$124,467.35	\$126,311.86
22	\$119,095.76	\$120,859.70	\$122,650.10	\$124,467.35	\$126,311.86
23	\$119,095.76	\$120,859.70	\$122,650.10	\$124,467.35	\$126,311.86
24/24+	\$120,489.08	\$122,273.92	\$124,085.52	\$125,924.31	\$127,790.67

PROPOSED FF/EMT GUIDE: 2019 through 2023

	2019	2020	2021	2022	2023
1	\$51,770.72	\$51,770.72	\$51,770.72	\$51,770.72	\$51,770.72
2	\$57,667.38	\$57,667.38	\$57,667.38	\$57,667.38	\$57,667.38
3	\$63,564.04	\$63,564.04	\$63,564.04	\$63,564.04	\$63,564.04
4	\$69,460.70	\$69,460.70	\$69,460.70	\$69,460.70	\$69,460.70
5	\$75,357.37	\$75,357.37	\$75,357.37	\$75,357.37	\$75,357.37
6	\$81,254.03	\$81,254.03	\$81,254.03	\$81,254.03	\$81,254.03
7	\$86,158.98	\$86,158.98	\$86,158.98	\$86,158.98	\$86,158.98
8	\$93,405.08	\$93,405.08	\$93,405.08	\$93,405.08	\$93,405.08
9	\$105,329.80	\$105,329.80	\$105,329.80	\$105,329.80	\$105,329.80
10	\$105,329.80	\$106,887.25	\$108,468.06	\$110,072.58	\$111,701.17
11	\$105,329.80	\$106,887.25	\$108,468.06	\$110,072.58	\$111,701.17
12	\$105,329.80	\$106,887.25	\$108,468.06	\$110,072.58	\$111,701.17
13	\$105,329.80	\$106,887.25	\$108,468.06	\$110,072.58	\$111,701.17
14	\$106,332.99	\$107,905.48	\$109,501.57	\$111,121.59	\$112,765.91
15	\$106,332.99	\$107,905.48	\$109,501.57	\$111,121.59	\$112,765.91
16	\$106,332.99	\$107,905.48	\$109,501.57	\$111,121.59	\$112,765.91
17	\$106,332.99	\$107,905.48	\$109,501.57	\$111,121.59	\$112,765.91
18	\$106,332.99	\$107,905.48	\$109,501.57	\$111,121.59	\$112,765.91
19	\$107,336.18	\$108,923.72	\$110,535.07	\$112,170.60	\$113,830.66
20	\$107,336.18	\$108,923.72	\$110,535.07	\$112,170.60	\$113,830.66
21	\$107,336.18	\$108,923.72	\$110,535.07	\$112,170.60	\$113,830.66
22	\$107,336.18	\$108,923.72	\$110,535.07	\$112,170.60	\$113,830.66
23	\$107,336.18	\$108,923.72	\$110,535.07	\$112,170.60	\$113,830.66
24/24+	\$108,590.16	\$110,196.51	\$111,826.96	\$113,481.86	\$115,161.59



## **BACKGROUND**

### **Fire District Background and Demographics**

Evesham Township (the “Township”) is located in Burlington County and includes a mix of residential and commercial/retail properties, along with a large area of wildland-urban interface. The Township is in southern New Jersey, on the borders of Burlington and Camden Counties, and encompasses 30 square miles. The mutual aid districts for Fire and Emergency Medical Services (EMS) include Medford and Mount Laurel in Burlington County, along with Cherry Hill, Voorhees, Waterford and Berlin in Camden County. Evesham Fire-Rescue (the “Department”) is a combination career/volunteer agency that delivers both Fire and EMS services to a growing community of over 48,000 residents.

The Fire District is governed by a publicly elected five-member Board of Fire Commissioners. The Fire District created by Evesham Township Ordinance No. 68-20 has all the powers of municipal government except the power to legislate. All local legislation (ordinances) are created through the Evesham Township Council. The Fire District is the responsible public agency for providing all Fire and Emergency Medical Services for and to the Township. In addition, the Fire District operates the Office of Emergency Management and provides Uniform Construction Code services (through its certified inspectors) to the Townships' Department of Community Development. The Board of Fire Commissioners is responsible for establishing operational policies, hiring and appointing members, and the funding for the operations of the Fire District within the guidelines and statutes of the State of New Jersey. The board, as public officials, must follow all the rules that are promulgated for public agencies.

The Board of Fire Commissioners each serve a three-year term, with the elections staggered over the three-year term. The election for the Board of Fire Commissioners is held during the November General Election. Approval of the annual budget is no longer required on the public ballot and can increased by no more than 2% with Board of Fire Commissioner approval in accordance with New Jersey State Law P.L. 2017, c.206. A fire district's introduced budget must be balanced as well as at or under the levy cap established pursuant to the 2010 levy cap law (N.J.S.A. 40A:4-45.45).

The total staffing of the Department encompasses approximately 130 fire and emergency medical personnel; these personnel are comprised of career, per-diem and volunteer firefighter and emergency medical technicians (EMT). Volunteer firefighters must complete a minimum of a 120-hour course to certify as New Jersey Firefighter Level 1 and our volunteer emergency medical personnel must complete a minimum 160-hour course to certify as New Jersey Emergency Medical Technicians.

The Department currently has 27 uniformed career personnel including a Chief, 2 Captains, 3 Lieutenants, and 21 Firefighter/Emergency Medical Technicians. The Firefighter/Emergency Medical Technicians contract is the subject of this proceeding and the Captains and Lieutenants are covered by a separate Collective Negotiations Agreement. In

addition, the Department has three non-uniformed personnel, including a Business Manager, clerical and IT support personnel.

Emergency response operations are delivered from one or all of the Department three fire-rescue stations which are located strategically throughout the Township. Station 221 is located on Main Street in downtown Marlton, Station 223 is located on Merchants Way in the Kings Grant section of the Township and Station 225 is located on Hopewell Road in the Marlton Lakes/Sanctuary section of the Township. Each station has a mix of apparatus that provides for both fire and emergency medical services response.

Business operations are conducted from the Department Fire Administration Office which is located within the Evesham Township Municipal Building. The Fire District Administration Office is home to the Division of Fire Prevention/Education. In addition, the Business Manager and clerical staff also work from the Fire District Administration Office and provide support to the operations of the Fire Department and Board of Fire Commissioners. The administration office is open Monday through Friday from 8:30am to 4:30pm.

According to the most recent census data, there are 45,060 people and 17,357 households in Evesham Township. The racial make-up of the town is 85.7% White; 5% Black or African-American; 6.1% Asian; 0% Native American; 0.1% Native Hawaiian and other Pacific Islander; 4.7% Hispanic or Latino; and 1.9% two or more races.

The Township population is spread out with 22% under the age of 19; 12% between 20 to 29; 12% between 30 to 39; 14% between 40 to 49; 17% between 50 to 59; 23% 60 or older, and 16.1% are 65 years and over. The median age is 42.4, with 63% between 18 and 64. Females comprise 51.5% of the population.

There are 17,357 occupied housing units in the Township. Of the 12,211 family households, 31.2% have children under the age of 18 living with them; 58.2% are married couples, living together; 8.5% have a female householder with no husband present; and 29.6% are non-families. Of the non-family households, 25.2% have a householder living alone, and 11.3% have a householder 65 years or older. There are 2.60 persons per household.

There is a total of 18,859 housing units in the Township, 76% are owner-occupied and 92% occupied, with 76% being single units. The median value of owner-occupied housing units is \$282,900, compared to \$244,400 for Burlington County, and \$193,500 for the United States. The median value of owner-occupied housing in Evesham is approximately 20% higher than in Burlington County.

Of persons 25 years or older, 95.8% are high school graduates and 46.8% have a bachelor's degree or higher, compared to 93.4% and 86.3% for Burlington County, and 89% and 39% for New Jersey; and 87.2% and 78.1% for the United States respectively.

The 2013-2017 American Community Survey shows that in 2017, the median household income in Evesham Township is \$94,395 (with a margin error of +/- 4,158), compared to \$82,839 for Burlington County, \$76,475 in New Jersey, and \$57,652 for the

United States. The median household income in Evesham Township is approximately 10% higher than in Burlington County and 25% higher than in New Jersey. The median household income in Evesham places it in the top third of municipalities in the State. The mean income was \$116,188 (with a margin of error of +/- 3,250). Per capita income was \$45,247 (with a margin of error of +/- 1,394). This compared with \$39,528 for Burlington County, \$39,069 for New Jersey, and \$31,177 for the United States.

Approximately 30% of the Evesham population have a household income between \$50,000 and \$100,000, and 34% between \$100,000 and \$200,000. Approximately 4.4% (with margin of error +/- 1.00) are below the poverty level, compared to 6.5% in Burlington County, 10.7% in New Jersey, and 11.8% in the United States. Persons below the poverty level in Evesham were about two-thirds of the rate in Burlington County and two-fifths of the rate in New Jersey.

### **Fire District Finances**

The Fire District's 2019 total municipal budget reflected revenues of \$10,469,904 which includes \$8,019,556 to be raised by taxation and total appropriations of \$10,469,904. The amount to be raised by taxation in 2019 increased by \$842,951 from 2018 which is within the 2% CAP permitted plus available "Cap Bank." The Fire District has the second highest budget amongst Burlington County Fire Districts, and the eighth highest tax rate.

The Fire District's 2019 total appropriations of \$10,469,904, is a 10.4% increase from the year before of \$9,479,565. The anticipated revenues in the 2019 Budget include \$1,200,000 in EMS services, \$950,00 Fund Balance utilized in addition to the \$8,019,556 to be raised by taxation. The Fire District raised 77% of its current budget from property taxes, 11% from EMS billing, 3% from fees for services, and 9% or \$950,000 from unrestricted Fund Balance. The operating appropriations include salary and wages, fringe benefits, capital appropriations and principal and interest on debt service.

The 2019 Budget shows \$7,320,137 as the adjusted tax levy prior to exclusions. The adjusted tax levy was \$8,019,556, the maximum allowable amount to be raised by taxation. The Fire District has seen a regular increase in ratables, with \$48,885.71 available to spend in 2019 without any increase on the tax rate. Between 2014 and 2018, the tax rate remained unchanged at 0.137%, and increased to 0.15% in 2019. The Cap Bank available from 2016 was \$113,979, from 2017 was \$352,803, \$540,395.00 from 2018 for the 2019 Budget and has \$903,723 available for the 2020 budget.

The net assessed value taxable as of 10/1/2018 was \$5,310,927,232.00 an increase of \$67,789,854.00 from the previous year. Each penny of the tax rate is equal to \$531,092.72 of spending. The average assessed value of a single-family dwelling in the Township is \$272,000.00. The tax rate for the current year (2019) equals \$0.1510 (estimated) per \$100 assessed value. The tax rate for 2018 was \$0.137 per \$100 assessed value. The change in the tax rate equals \$0.014, or an average increase in the tax bill of an average family home of \$38.10 annually.

The Fire District's starting Fund Balance as of December 31, 2018 was \$3,179,342 million and was proposed to be \$2,229,342 after utilization in the 2019 Budget. The Fire District starting Fund Balance as of December 31, 2017 was \$3,583,545 million and was proposed to be \$2,629,433 after the utilization in the 2018 Budget.

The Fire District's Debt Service in 2019 was \$850,000 that lowers to \$250,000 in 2020 through 2024. The interest on the debt in 2019 was \$65,368 that lowers to \$28,013 in 2020, \$21,788 in 2021, \$15,563 in 2022, \$9,338 in 2023 and \$3,113 in 2024.

The Fire District has excess budgeted resources from 2019 which were not expended. In its 2019 Budget, the Fire District projected 24 Firefighter/EMT positions. Since the summer of 2019, it has employed only 21 Firefighters. The Fire District also projected to hire six Firefighters in 2019, none of whom were hired. The Fire District budgeted \$2,496,000 for Firefighter salaries in 2019 with only \$2,290,700 expended.

The 2018 Budget reflected total revenues of \$9,479,565 which included \$7,305,717 to be raised by taxation and total appropriations of \$9,479,565. The 2018 budget increased the amount to be raised by taxation by \$170,195 from 2017. The proposed amount of fund balance to be used in 2018 increased by \$400,000 was \$825,000. The net assessed value as of 10/1/2017 was \$5,243,137,378 an increase of \$29,988,000 from the previous year.

### **Evesham Fire District No. 1**

Evesham Township Fire District No. 1 (the "Department"), is an ISO-Class 2 Combination Department, comprised of a combination of volunteer and career responders. The Fire District provides code enforcement, emergency medical, fire prevention, fire suppression, and technical rescue services to Evesham Township.

The career staff consists of 27 uniformed career personnel, including a Chief (\$155,000); two Captains (\$138,037.90); and three Lieutenants (\$132,138.84) in a separate bargaining unit; and the IAFF bargaining unit, consisting of 21 Firefighter/EMTs and Firefighter/Inspectors. All bargaining unit members are cross-trained and required to work at and regularly respond to both fire suppression and EMS calls.

The Department's hiring requirements include two years' experience as a certified New Jersey Fire Fighter One, one-year experience as a New Jersey certified EMT or MICP with CPR, and at least 60 college credits from an accredited institution. The members of the Department are multi-faceted and mandated to obtain New Jersey Fire Instruction Level 1 and New Jersey Uniform Fire Code Fire Inspector certificates within one year of employment. All career personnel must be certified as emergency medical technicians, Fire Fighter 2, Fire Inspector, and Fire Instructor. The existing career staff is experienced and educated. Ten of the 21 employees have at least 14 years of experience with the Fire District, and 18 of the 21 have five or more years of experience in the Fire District. Twenty of the 21 have at least an Associate's Degree, and one-third have either a Bachelor or Master's degree.

Except for the Fire District's newest hires, and one Firefighter/EMT, all of the members carry the titles of NJ UFC Fire Inspector and UCC Fire ICS Inspector and are eligible to perform Uniform Construction Code inspections for Evesham Township. Firefighter/Inspector is a promoted position, which requires approval by the Fire District Commissioners once the employee has obtained the necessary certifications. To obtain UCC Fire Inspector ICS requires 130 hours of classroom instruction, two exams, and five years as a Fire Fighter. All of the bargaining unit members are also members of the Burlington County Technical Rescue, in at least one discipline, which includes trench rescue, confined space rescue, rope rescue and structural collapse rescue. Most are members of multiple disciplines.

All bargaining unit members work seven, 12-hour shifts from 6:00 a.m. to 6:00 p.m. on a Monday to Friday rotation, during a two week pay period, resulting in an average of a 42-hour work week, and 168 hours during a 28-day period. The career staff are supplemented by volunteer Fire Fighters and Emergency Medical Technicians and per diem EMT employees, who work from 6:00p.m. to 6:00 a.m., Monday through Friday and Saturdays and Sundays. The number of volunteers has been declining.

Career staffing is also at an all-time low. As of January 1, 2018, there were 26 Firefighter/EMTs and Firefighter/Inspectors. Currently there are 21-unit members, with one in the military. Calls for service have been increasing annually, with career staff answering 2,773 calls in 2014 and 3,781 calls in 2018. Between 2016 and 2018, district-wide, fire calls increased from 1,522 to 1,821, and EMS calls from 5,042 to 5,769.

The most recent Agreement ran from January 1, 2014 through December 31, 2018. The contract includes two separate Salary Guides: one for Firefighter/EMTs and one for Firefighter/Inspectors, which applies to anyone promoted to a Firefighter/Inspector position. The Guides and salaries are based upon the status of the Firefighter as either a Firefighter/EMT or Firefighter/Inspector. Each guide consists of 9 Steps, with longevity increases of 3.5% at 96 months of employment; 4.5% at 156 months of employment; 5.5% at 216 months of employment; and 6.75% at 276 months of employment.

The starting salary for a FF/EMT is \$51,770 and FF/Inspector is \$56,797 with top step pay for a FF/EMT of \$108,590 and \$120,489 for a Firefighter/Inspector. The IAFF is comprised of 21 members; 3 at step 19 (\$119,095), 7 at step 14 (\$117,981(6)/\$106,332 (1 FF/EMT)); 1 at step 9 (\$116,866); 2 at step 7 (\$95,565); 4 at step 6 (\$90,645); 2 at step 5 (\$84,881) and 2 at step 3 (\$70,839 (1)/\$63,564 (1 FF/EMT)).

The 2019 Budget has a Chief (\$156,550), 1 Captain (\$136,259), 3 Lieutenants (\$129,847), 24 Firefighter/EMT (\$96,000), 6 Firefighter/EMT new hires (\$40,000). The 2018 Budget had a Chief (\$178,590), Assistant Chief (\$169,909), 3 Captains (\$102,360), 3 Lieutenants (\$129,441) and 25 Firefighter/EMT (\$93,005). The prior contract was from January 1, 2009 through December 31, 2013. The Fire District is also party to an agreement with the Evesham Fire Officers FMBA Local 115 (the "FMBA") that covers the Lieutenants (2) (\$132,138.84 each), Captains (3) (salaries of \$138,037.90 each) and Battalion Chiefs with a term of January 1, 2019 through December 31, 2021.

In 2018, the Fire District applied for a SAFER (Staffing for Adequate Fire and Emergency Response) Grant from the Department of Homeland Security, Federal Emergency Management Agency. In 2019, the Fire District was awarded the Grant in the amount of \$1,553,171.20, which provides for \$629,664 for the first two (2) years and \$293,843.20 in the third year. The Grant outlines the firefighter positions funded as follows: 8 firefighters at an annual salary of \$52,776, benefits of \$52,168 for total compensation of \$104,944 per firefighter.

## **POSITION OF THE PARTIES**

### **The Fire District's Position**

The Fire District submits that a consideration of the relevant factors contained in N.J.S.A. 34:13A-16g ("The 16g Criteria") supports the Fire District's Final Offer and dictates against the award of the IAFF Final Offers.

1. Interest and Welfare of the Public, Financial Impact on Governing Unit, and Limitations Imposed Upon the Unit's Property Tax Levy and Taxpayers

With respect to the parties' respective salary proposals, the Fire District submits that the Association will argue that the Fire District has failed to show that it is "unable to pay" the significant raises sought by virtue of the its Final Offer. The Township submits Dr. Caprio stated that his goal in reviewing the parties' proposals was to "examine the District's ability to pay the increases" being sought by the Association concluding that "The District has more than sufficient resources to pay for the requested salaries of [the Association]."

The Township argues that Dr. Caprio's analysis and testimony attempted to prove that the Fire District has the "ability to pay" the IAFF's Final Offer and to have the taxpayers (who are "well-off") shoulder that burden. The Fire District notes that Dr. Caprio stressed the ability of the Fire District to raise additional monies through the tax levy (Dr. Caprio: "Maybe the District will need to raise taxes beyond the 2% cap") and the ability of the Fire District to "afford" the sought-after raises by, among other means, use of its surpluses ("Dr. Caprio: the District has increased its fund balances.").

The Fire District argues that the testimony of Business Manager Maureen Mitchell ("Ms. Mitchell") and the exhibits demonstrate that the Fire District's financial proposal is fair, equitable, and reasonable, and takes into consideration not only the Fire District's financial position and the interest and welfare of the public, but the fact that the taxpayers of Evesham deserve and currently pay generous wages for quality and professional fire and EMT service; all mandating against the IAFF's demand that those at the upper levels of the salary guide achieve a salary of \$127,791 in the final year of the five-year contract.

The Fire District argues that contrary to Dr. Caprio's assertions, the employer is not obligated under the law to demonstrate that it is "unable to pay." In fact, in considering the financial impact of the award on the public entity (N.J.S.A. 34:13A-16g(6)), the Courts have made it abundantly clear that a municipality should not have to prove that it is not financially able to afford [the Association's] final offer. PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994). In addition, the Fire District submits "it is not enough to simply assert that the public entity involved should merely raise taxes [like Dr. Caprio insisted] to cover the costs of a public interest arbitration award." Hillsdale, 263 N.J. Super at 188.

The Fire District argues that it is well settled that the "interest and welfare of the public" factor not only includes a financial analysis, but a broader analysis that has been uniformly held to encompass the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale. Sayreville and PBA Local 98, IA 2006-047 (November 5, 2008).

The Fire District argues that the record demonstrates that its Final Offer satisfies both of these prongs in that the offer, while generous in providing average per person raises per year of over 3.6% (and an average aggregate yearly increase of over 2.68% for the five-year agreement), promotes fiscal stability while still providing for a compensation package that will maintain an effective public safety department with high morale. The Fire District submits that not one unit member testified that they may seek other employment if the Fire District's Final Offer is awarded; nor was there any evidence that the Department will be decimated if the Fire District's offer is awarded and/or the Association's proposal is rejected.

The Fire District argues the its proposal provides for 18 of the 23-unit members to be earning at least \$100,000 by the end of this agreement (11 earning \$121,000), while the remaining five will be earning between \$75,000 and \$96,000 per year in 2023. The Fire District submits that contrary to the Association's position that the Fire District's proposed Guide is "draconian" and will negatively affect morale, the Fire District argues its proposed Guide calls for a raise for every single member every single year that they are proceeding "up" the Guide.

The Fire District argues the its Final Offer is reasonable and fiscally responsible, while the Association's offer will result in exorbitant increases which are no longer sustainable, and which are not in the public's interest.

The Fire District submits the "historical" Salary Guide which the Association seeks to maintain (above step 9) is not a traditional salary schedule. The Fire District argues the existing Guide includes "longevity" payments which have, over the years, been referred to as "steps." The Fire District submits those payments are not, and never should have been considered, "steps" in the Guide. The Fire District submits the "Guide" as presently constituted provides for a "top out" at Step 8 (\$103,616.77) and then a longevity increase of \$13,249.69 between step 8 and "longevity" Step 9 (a 12.79% increase following a 8.42 % increase in the previous year).

The Fire District maintains that when longevity was included in members' salary, the so-called "Guide" was adjusted to reflect those payments. The Fire District argues the Guide as presently constituted (which was approved by previous Boards of Fire Commissioners) is not in

the interests of the taxpayers because, among other things, it increases steps at every level. The Fire District suggests that the “longevity steps” should have remained constant and, if the previous Boards decided to award raises to those who achieved the top step (i.e., step 9), they should have, at most, awarded “off guide” increases to, at least, ensure that those individuals received a cost of living increase while avoiding long-term and everlasting unsustainable salary increases at the upper levels.

The Fire District argues that previous Boards of Fire Commissioners negotiated increases which have resulted in firefighters not only being awarded the exorbitant longevity payments/steps (e.g., 12.79%), but have provided for cost-of-living increases over and above those longevity payments. The current Board argues, in the best interests of the taxpayers, that the historical system of simply negotiating or awarding “across the board” raises over and above salary guides (which includes significant built-in longevity payments), must come to an end. The Fire District argues while it might consider cost of living increases being awarded off guide to be a reasonable approach, increasing “longevity steps” each year after members have received an increase of 12.79% from the previous year is simply untenable and, from a taxpayer perspective, outrageous.

The Fire District submits that the Association’s proposal provides that a Firefighter/Inspector at Step 9 moving to Step 10 in 2023 will realize a 6.06% increase in pay in that year (from \$116,866 to \$123,946) after benefiting from a 12.79% longevity increase (\$103,616 to \$116,866) and an 8.42% increase (\$95,565 to \$103,617) in the two years prior; all the result of historically providing for a percentage increase over and above the longevity payments which are already included in members’ salaries.

The Fire District argues that in the best interests of the taxpayers the cycle historically employed by these parties much stop. For if the cycle continues, the Fire District submits the salaries will be exponentially and virtually uncontrollably increased to a point where firefighters are earning hundreds of thousands of dollars per year.

The Fire District argues its proposal provides for a more reasonable and rational Salary Guide which is “in-line” with the interests and welfare of the public and the taxpayers. In this regard, the Fire District submits its proposal (as corrected with respect to Brinker, Huber, Heston, and Komito) provides for average annual increases for each unit member of 3.67% (12 members earning between 2.9% and 14.21%) and an average annual aggregate increase for the unit of 2.68%. The Fire District argues its proposal that new hires “top out” at the \$100,000 “Step 20” is also in the best interests of the public and taxpayers in that those employees will, in virtually every year, receive fair and reasonable increases of between 2.27% and 6.67% in their salaries. The Fire District submits that these increases can hardly be argued to be unreasonable and not in the best interests of the taxpayers. The Fire District submits that there was no showing that the IAFF will suffer a negative impact in morale or will seek employment elsewhere.

The Fire District submits that unlike the current “Guide” and the Association’s proposal, the District’s proposal provides for the “up-front” step movement of unit members such that all members proceeding up the Guide receive a yearly increase effective January 1st, rather than have to “wait” until their anniversary to receive their step increase. The Fire District argues that



providing for January increases for all members will ease the administrative burden associated with step increases occurring at different time during the year based on anniversary dates.

The Fire District argues its proposal to eliminate the “Inspector” title from the salary structure (in favor of one Firefighter/EMT Guide) is also in the best interests and welfare of the public in that, as testified by Ms. Mitchell, nearly every Firefighter/Inspector (22 out of 23 unit members) has been paid a 10% premium (built into the Salary Guide) for “performing” those services, while only two to three of the unit members actually perform those services. The Fire District argues that the “premium” paid to the non-performing inspectors costs the Fire District approximately \$1.06 Million per year.

The Fire District argues that the Township can decide to perform those inspections “in house” at any time (removing the responsibility to perform those services from the Fire District), and the Fire District is not proposing to decrease the salaries of those firefighter/inspectors who are not performing even one inspection per year. Rather, the Fire District submits it is proposing to continue paying those inspectors (even though they do not perform inspections) and proposing that new hires be placed on the Fire District’s proposed Guide and only those new hires that become certified and actually perform inspections be paid a stipend of \$3000.00.

The Fire District argues the Association’s proposal and Dr. Caprio’s analysis provides for aggregate annual increases of 4.68% (2019), 4.18% (2020), 4.65% (2021), 4.29 (2022), and 4.73% (2023) which the Fire District submits are exorbitant. The Fire District argues the Association’s proposal calls for an average per person annual increase exceeding 6% that cannot be sustained and are not in the best interests of the public and the taxpayers says the Fire District.

The Fire District submits that Dr. Caprio’s suggestion that seven-unit members will suffer a pay decrease under the Fire District’s proposal is contrary to Ms. Mitchell’s testimony that no member will receive a pay decrease as a result of the Fire District’s proposal. Rather, the Fire District submits members will be “slotted” into the appropriate step which will allow for increases in pay for every member proceeding up the 9-step guide (e.g., Brinker at \$90,645 in 2019 will move to \$93,000 in 2020 for an increase of over 3%).

The Fire District also challenges Dr. Caprio’s assertion that the unit will be “losing” over \$600,000 in salary payments over the life of the agreement, with an annual average “loss” of salary of approximately \$25,000. The Fire District submits that assumes the Association would have the historical “percentage increases on top of all steps” (including so-called longevity steps) be continued *ad infinitum* with the unit members entitled to those increases despite their cost.

The Fire District argues that it can hardly be viewed as in the best interests of the public/taxpayers that firefighters earning \$78,670 in 2018 should receive a \$45,275 raise during the life of the Association’s proposed contract. The Fire District argues this is in stark contrast to the Fire District’s proposal which provides for a reasonable increase during the life of the agreement of \$17,329 for those particular members and overall, provides for increases of \$270,844.05 during the life of the agreement. The Fire District maintains the unit’s members are not “losing” any monies as a result of the Fire District’s proposal. They are simply being forced

into a more realistic and sustainable salary structure that provides fair and reasonable compensation.

The Fire District argues that the status of the Fire District's pending budget introduction should be considered in this matter. As Ms. Mitchell indicated, the Fire District's budget will be introduced, by direction of the Board of Fire Commissioners, on December 9, 2019. As instructed by the Board, the budgeted salaries for this bargaining unit will be based on the Fire District's Final Offer with annual increases occurring on January 1st of each year.

The Fire District notes that Dr. Caprio testified that the Fire District can "exceed its tax levy" limitation to fund the raises requested by the Association. As Ms. Mitchell testified, the Board has instructed that the goal for the upcoming budget is to have a tax levy under the 2% cap.

The Fire District argues it has been the policy of the Fire District, and in the interests of the taxpayers, to "hold the line" on taxes (not raised in 2017 and 2018 where the District used surplus monies to balance the budget). The Fire District submits that this has been accomplished by not only using surplus and "cap bank" availability but also by not hiring additional career firefighters, not replacing administrative staff, and by other fiscally responsible actions. With respect to the current amount paid per household for fire/EMT services, Ms. Mitchell indicated that the average household pays approximately \$411 per year (fire levy of 5.21% of total tax levy for 2018) and that amount is expected to increase by \$20 in the upcoming year.

The Fire District submits that Ms. Mitchell detailed the initiatives that will be included in the 2020 budget, which (conservatively) projects an increase of \$489,372.95 from last year's budget. This includes expansion of services (paid EMT and duty crew), decrease in EMS billing revenue which Ms. Mitchell testified will result due to having to distribute a new RFP (which will decrease and delay revenues in 2020), increases in salary and wages and fringe benefits, and debt service.

The Fire District submits that the Fire District's staffing is at an all-time low (since being at 22 in the year 2000), and not only for staffing, but for financial reasons, the Fire District applied for and received a SAFER Grant. The SAFER Grant, which provides for federal funding for the hiring of eight full-time members, also requires that the Fire District hire and pay for an additional four members. Thus, the Fire District's salary expenses will increase in years 2020-2023 as the amount of the grant monies diminishes each year (in 2023, the Fire District will be required to pay 100% of the salaries of the new hires).

The Fire District argues that a consideration of the impact of a potential arbitration award on existing and/or planned programs and initiatives must be undertaken. The Fire District submits it may have to reconsider its plans to engage additional staff to provide for the continuing safety of the Evesham Township community depending on the award.

Of equal significance for both in budgetary and "public interest" concerns, the Fire District argues is its plans to initiate a duty crew program. The Fire District is having increased difficulty with "volunteer participation" both in terms of volunteers responding to calls and a decline in volunteerism. In an effort to address this issue, the Board plans to initiate and budget for a "duty

crew program” which will provide for “stipends” for volunteers who will be in house and will be able to respond to calls more expeditiously. This initiative is expected to result in an annual increased cost to the Fire District of \$192,000.

The Fire District points out that the Association has argued that the District can use its Fund Balances to balance its budget and pay for the salary increases they seek by virtue of their Final Offer. Despite this contention, the Fire District submits that the Fire District has managed its Fund Balance in a fiscally responsible way and in the best interests of the public and the taxpayers. In this regard, Ms. Mitchell testified that Fund Balances are maintained in accordance with “best practices and GAP accounting” and are required to be maintained for two primary reasons. First, due to the schedule of payments of tax revenue by the Township to the Fire District (once per quarter), the Fire District is required to maintain sufficient fund balances to guaranty it can satisfy its cash flow demands (i.e., Fire District does not receive its first payment from the Township until the fourth month of the year, thus, having to “front” monies for salaries and other operating expenses). Second, EMS billings and receipts, which are an additional source of revenue for the Fire District, are also subject to significant delays in being paid to the Fire District again, requiring that the Fire District maintain sufficient Fund Balances to satisfy its cash flow needs until such EMS billings are realized.

Finally, it is the Fire District’s position that the interests and welfare of the public require that an EMS only salary guide be awarded at this time. The Township submits that as demonstrated by Ms. Mitchell’s testimony, the volume of EMS calls has increased significantly since 2002 (from 1200 to 5590), while the “fire calls” have remained virtually flat since 2013. Moreover, more medical and rehabilitation facilities are being developed in Evesham (requiring additional personnel) and the Fire District has many “55+ communities” who call on it for emergent medical services.

The Fire District Board has directed administration to implement the “per-diem” EMT program (which it did in 2019 at a cost of \$455,000) and also to phase-in the hiring of full-time EMT’s (due to the increasing number of calls and decreasing volunteerism and difficulties with per-diem EMT’s who work for multiple venues) in an effort to provide effective, efficient, and expeditious emergency medical services to the citizens of Evesham. The Board determined to phase in a full time, paid EMT program (to address system challenges and improve service delivery) and to provide for full time EMT’s “to provide primary EMT coverage 24/7/365.”

The Fire District proposes an “EMT only” Guide, based largely upon that currently employed by Mt. Laurel. The Fire District is aware that if the Guide is awarded it will have to negotiate other terms and conditions of employment with the Association, such as work schedule, hours, etc. The Fire District argues that providing an EMT Only Guide is in the best interests of the citizens of Evesham and will provide a starting point for the District to continue to provide the much-needed emergency medical services its constituents require.

The Fire District submits that given that the Board has already considered the issue of “shift differential” in the context of formulating the EMT Only Guide, the Fire District has proposed that the “Shift Differential” provision of the existing agreement be eliminated. The Fire District submits the existing agreement provides for “regularly scheduled” shifts of between 5 AM and

6PM and there are no “shifts” allowed under the agreement “outside” of the regular shifts. For this reason, and for the reasons discussed above relating to the desire to engage full time, “around the clock” EMT’s with regular shifts covering 24 hours, a 7% shift differential is not only unnecessary, but is cost prohibitive.

## 2. Comparability (16g(2))

The Fire District has provided the salary guides for a number of fire departments/districts including Bordentown, Cherry Hill, Florence, Glassboro, Jackson, Medford, Mt. Laurel, Voorhees, Westampton, Winslow, Willingboro, Evesham Police, and Mt. Laurel EMT.

The Fire District argues that a review of the salary guides provided by the Fire District shows that Evesham’s firefighters are compensated at a level higher than any other fire department provided. This includes Districts/Departments, unlike Evesham, that work a 24/7 schedule (nights and weekends), 365 days per year. This also includes Districts/Departments, like Evesham, that require their staff to perform both firefighter and EMT functions (e.g., Medford salaries, under a 20 step guide, ranging from \$48,709 to \$94,542 in 2021 and Florence salaries between \$40,851 and \$64,700 with longevity of \$2500 at 20 years).

The Fire District suggests that IAFF current rates of pay (for Firefighter/Inspectors) is not the result of the “stringent” hiring requirements of the Fire District, but the result of their receiving a 10% premium increase for obtaining the inspector certification; a certification that is only “used” by two or three of the 23 unit members. The Fire District argues it is attempting to “right the ship” by providing for a reasonable Guide that does not, like in the past, compound (year after year) a longevity raise awarded in year nine of employment.

The Fire District also submits that it can’t be reasonably be argued that the unit members here should earn nearly \$14,000 more than the highest paid rank and file police officer in Evesham who, as of 2017, “top out” at \$113,734, and who, unlike this unit, work 24/7/365.

## 3. Cost of Living:

CPI information for the year 2019, which shows the average change, over time, in prices paid by consumers for items and, as the arbitrator is aware, is the most widely used measure of inflation. For 2019, the CPI has averaged between 1.5% and 2.0% (2018 average annual 1.8%). Given that the CPI is often used to adjust consumer’s income payments, the District’s proposal to increase members’ individual salaries an average of 3.6% per year is woefully reasonable. On the other hand, the Association’s proposal is significantly out of sync with inflation indicators.

4. Continuity and Stability of Employment:

The Fire District argues the bargaining unit is “stable” in that over 50% of the unit members have served for eight years or longer. In fact, 11 of the 23-unit members have greater than 14 years “under their belts.”

The Fire District argues that given the comparison of the IAFF salaries to other departments, and their work schedule (again, unlike most other departments, working “days” only and no nights and weekends), the Fire District’s proposal of providing over a 3.6% average yearly increase to bargaining unit members will not result in turnover or somehow decimate the department. The Fire District argues there was no testimony that if the unit members do not receive the raises they seek, that they will seek employment elsewhere. The Fire District submits that 12 of the members are already earning over \$106,000 per year, and it would be incredible for those members to “jump ship” and take pay decreases because of their dissatisfaction with the Fire District’s proposal.

The Fire District argues there is no history of layoffs or furloughs in this unit, and the Fire District is actually hiring twelve new members which are required to be fully funded by the Fire District beginning in 2023.

5. Overall Terms and Conditions of Employment and Parties’ Final Offers

The parties have presented a number of proposals which were addressed during the arbitration hearing. Since those proposals either involve “overall compensation” and/or other economic benefits received, they will be addressed in the following paragraphs.

**Other Fire District Proposals**

- (1) Article 9, para. C., pg. 9 (payment of sick leave upon retirement): It is the District’s understanding that the Association has not objected to the Agreement providing that employees hired after May 22, 2010 have sick leave upon retirement be capped at \$15,000 in accordance with existing law.
- (2) Article 9, para. C., pg. 9: The District has proposed a modification of this provision to provide that employees discharged for cause are not entitled to payment of any accrued leave time except as mandated by law. In response to the Association’s concerns that employees who voluntarily choose to terminate their employment are entitled to accrued leave time, the District amended its offer to provide that those who are discharged for cause or voluntarily terminate their employment prior to retirement are not entitled to accumulate leave payment(s) unless required by law.
- (3) Sick leave and vacation leave prorated upon retirement: In response to the Association’s concerns that employees who voluntarily choose to terminate their employment are entitled to

accrued leave time (while retirees may not be so entitled), the District amended its offer to provide that those who retire or who voluntarily terminate their employment are entitled to a pro-rated amount of leave “payout” upon separation (i.e., if retire on April 1st, only entitled to one-quarter of leave time already credited).

- (4) Catastrophic Illness Provision: The Fire District has proposed a catastrophic illness process identical to that negotiated with the Fire Officers Association. Ms. Mitchell indicated that there have been numerous problems and issues associated with its implementation and a more thorough and detailed process would be beneficial to all parties concerned.
- (5) Drug and Alcohol Policy: The District has proposed that the Policy in the Agreement be eliminated in favor of a consistent, district-wide policy.
- (6) Article 37, p. 24: Fire Investigator clause: The Fire District proposed to eliminate paragraph D as this is management prerogative as to how the District assigns personnel.
- (7) Training and Education (Article 21): The District has proposed that (1) reimbursement to employees is limited to one degree only (i.e., one Bachelors, Masters, etc.); and (2) that reimbursement percentages be determined by the grade attained in the respective course. This latter proposal is consistent with the FMBA agreement and serves as an incentive for unit members to “do their best” in their coursework. The Association’s position that a “C” is acceptable for 100% reimbursement promotes mediocrity.
- (8) Article 25, p. 20 (Agency Shop): the parties have reached agreement on this provision.
- (9) Article 15, p.12: Delete opt-out language since opt-outs are non-negotiable under existing law. As per well-settled law, these provisions are non-negotiable. It is noteworthy that the District has no present intention to discontinue opt-out payments. However, since such payments are non-negotiable, they should not be part of a collectively negotiated agreement.

### **Association Proposals and District Responses**

- (1) Regular work schedule shall be 168 hours with an average of 42 hours/week in a 28-day period.  
Response: The schedule as presently envisioned in the Agreement is appropriate and acceptable. The Association has not shown why the “status quo” should be upset, particularly to do so would negatively affect the allowance for flexibility in the scheduling of personnel by management.
- (2) Amend overtime provision to allow for compensatory time as alternative to overtime.  
Response: The District has rejected this proposal since it will, among other things, result in the District’s “paying out” compensatory time at the unit member’s higher rate at a subsequent time as opposed to paying the unit member overtime at the time he/she works. In addition, awarding compensatory time in lieu of overtime will contribute to the ongoing shortage of

staff; according to Ms. Mitchell, it is currently difficult to provide full staffing due to current leave time. Compensatory time (i.e., more time off) will compound that problem.

- (3) Proposal that Management be Required to Respond to Vacation Requests within a Certain Time Period. Response: This system is currently the subject of a detailed SOP (902.1) and is functioning in the best interests of all involved. The Association has not demonstrated that a modification of current procedures is warranted.
- (4) Additional Monies for “Acting out of Title” (increase from \$35 to \$60). Response: Currently, Fire Officers receive \$50 “out of title” pay for covering an entire command. Providing a firefighter with \$60 to cover a much smaller platoon is unwarranted, inequitable, and has not been justified by the Association.
- (5) Residential Stipend. Response: there has been no showing that implementing a costly (and unnecessary) residential stipend will have any impact (either on attracting candidates or retaining existing members) on the District or the citizens of Evesham. As such, the offer should be rejected.

### **The IAFF’s Position**

#### **A. Fire District Salary Proposal**

The IAFF argues that the Fire District's wage proposal constitutes a radical and unprecedented alteration of the existing Salary Guides and is unwarranted based upon the record evidence. The IAFF argues that the Fire District’s wage proposal will decimate the economic well-being of the existing bargaining unit, threaten the continuity and stability of Fire fighter/EMTs and Firefighter/Investigators who have served the Fire District with distinction, and creates an irrational and unreasonable new Salary Guide that unduly erodes the Fire District's standing with other comparable fire districts.

The IAFF argues that the Fire District is not simply making a counter-economic proposal regarding a reduced cost-of-living percentage, with the addition of a step to an existing guide. Rather, the IAFF notes that the Fire District is proposing elimination of the existing Salary Guides for Firefighter/EMT and Firefighter/Inspectors and the longstanding 8 Step Guide and four longevity increases over the remaining years of employment, and replacing that with a 25 Step Guide, substantially reducing every step of the Guide, including the top and bottom steps, and freezing the Guide over the life of the contract, without offering a cost-of-living increase to any employee. The IAFF maintains the Fire District failed to produce any evidence that there is a need for such a draconian change in terms and conditions of employment.

The IAFF argues the proposed change will have a destructive impact on the existing bargaining unit. The IAFF submits the Fire District's wage proposal results in decreasing salaries from anywhere between \$15,000 to over \$40,000 per step. The IAFF submits that the

economic impact just during the life of this contract is devastating on existing bargaining unit members. The IAFF submits that for employees Gancarz and Heisler, the proposed change results in a \$54,344 loss in salary between 2020 and 2023; for Brinker, Heston, Komito and Huber, the loss is \$44,930; and for Hamilton and Denelsbeck, the loss is \$57,321, during the five years of this contract.

The IAFF argues that the monetary loss over the career of existing bargaining unit members is even more substantial. The IAFF submits that the Fire District's proposed guide results in a loss over a Firefighter/Inspector's career of \$620,722 from what they would have earned under the existing Salary Guides. The IAFF submits that average annual wage loss is \$24,828 per Firefighter/Inspector over the life of his/her employment. For Firefighter/EMT, the loss over their career is \$422,813.50. Factoring a 2% adjustment based upon CPI, the IAFF notes it results in a projected loss of \$765,178, and average annual loss of \$30,607 under the District's proposed Guide.

The IAFF notes that under the Fire District's proposal, the 10 most senior and experienced bargaining unit members will go several years without any increase in salary. For example, they submit that Firefighters Massi, Groody, and Borgstrom go from 2020 to 2023 without any wage increase. Firefighters Pearson, Priggemeier, Shingleton, McDonough, Cavella, and Bianchi receive no increase in salary from 2021 through 2023. According to the IAFF, the average increase for these 10 Firefighters ranges from 0.032% to 0.051% for the life of the five-year contract.

The IAFF argues that not only will almost half of the bargaining unit receive virtually no salary increases during the five years of the contract, but the District's proposal results in a decline in real income over time for those employees, as the value of wages under the Fire District's proposal falls behind the CPI.

The IAFF maintains the Fire District's proposed guides undermine the historic employment structure in the Department. The IAFF argues that for over 30 years, the Fire District has maintained the Firefighter/Inspector Guide, which establishes higher salaries for any Fire Fighter who was promoted to the Firefighter/Inspector position. The Fire District acknowledges this position as a promotion by requiring the Board to vote to advance Firefighter/EMT to Firefighter/Inspector level. Promotion to a Firefighter/Inspector position is a necessary prerequisite to being promoted to Lieutenant. The IAFF submits that the Fire District's proposed Salary Guide eliminates this distinction and treats Firefighter/EMTs and Firefighter/Inspectors identically, despite the difference in education, training, duties and responsibilities. This, they argue, is irrational and denigrates the value of Fire Fighter/Inspectors.

The IAFF also argues that there is no relationship between the Fire District's proposed guide and the Fire District's internal pattern of settlement. The Fire District's settlement with the FMBA, the only other represented unit of employees, averaged 1.77% for Lieutenants and Captains for 2019, with a Lieutenant's salary at \$132,138.84 and a Captain's salary at \$138,037.90. The IAFF notes that the salary guide for Lieutenants and Captain remained unchanged, based upon a percentage difference per step from Step 14 of the Fire



Fighter/Inspector guide, with a revised salary schedule to be established for 2020 and 2021 as a result of the Fire Fighter/Inspector salary scale negotiated between the IAFF and the Fire District. The IAFF argues that as a result of the Fire District's elimination of the Fire Fighter/Inspector guide, the negotiated FMBA salary for 2020 and 2021 become meaningless as the Fire District negotiated a new Agreement with the FMBA without making any changes to its existing step Salary Guide.

The IAFF argues that internal relationships between Fire Fighter units, absent some extraordinary factors which are not present here, is an appropriate consideration. The IAFF argues that the Fire District may not single out rank and file Fire Fighters for a radical restructuring of their Salary Guides which causes a monumental diminution of their salary, while granting reasonable wage increases and failing to bargain comparable changes to any other unit's existing Salary Guide.

Equally relevant is an examination of the Step Guide as part of the contract between Evesham Township and Fraternal Order of Police. As of 2017, it was a 12 Step Guide with salaries starting at \$51,945 and topping out at \$113,734. These are salaries which are comparable to the current salary guide involving Firefighter/EMTs and Firefighter/Inspectors in the District, particularly considering the longevity, holiday pay, and EMT stipend included in the Salary Guides.

The IAFF maintains that the granting of a 4.6% increase to the Assistant Business Manager in 2018, and a 2.4% increase to the Business Manager in 2020 is also at odds with the alteration of existing Salary Guides which the Fire District has proposed for this bargaining unit.

The IAFF maintains that the Fire District's proposed guide understates its costs and has several irrational components. The IAFF submits that the Fire District's proposed guide, with its projected salary for those respective Firefighters in 2020 and every remaining year thereafter until the end of the contract, is understated, thereby making all of the District's cost projections inaccurate and unreliable. The IAFF argues that the Fire District's cost-out for the IAFF's proposal is also flawed because it bases its calculation for step movement on January 1, which is not the IAFF's proposal. Rather, the IAFF notes it is proposing to retain the anniversary date as the date for step movement. Further, the Fire District's projection of increased salaries from 2018 through 2023 are flawed, says the IAFF, because the Fire District fails to include 2018 step increases.

The IAFF also argues the Fire District's cost-out is disingenuous because of the arbitrary manner it calculates breakage. The IAFF submits the District's cost-out refuses to recognize known breakage for Firefighter Robertson and Firefighter Gallagher who was left in the middle of 2019. The IAFF notes that the Fire District includes in its cost-out, the increase for Firefighter Harper, when he became an Inspector in September of 2019. Finally, the IAFF argues that the Fire District's proposed Guide, because of its structure, creates irrational results. Firefighters Anderson and Harper were hired on the exact same day, yet it will take Firefighter Anderson two years longer to reach the top step. On the other hand, Firefighter Peyre-Ferry, will reach top step quicker and will be paid the identical top step salary as Firefighters who have significantly more education, responsibilities, and certifications. The IAFF argues that the Fire District's

proposal negates any value of obtaining the Fire Fighter/Inspector Certification, which it argues is contrary to the long term goals and interests of the Fire District taxpayers, who benefit from the expertise Fire Fighter/Inspectors bring to the Department, and the revenue they generate for the Township.

The IAFF maintains that the Fire District's proposal of a 25 Step Guide is at-odds with every other surrounding community and seriously erodes the Department's standing with other comparable Fire Districts, thereby threatening the continuity and stability of the Fire District's Firefighter/EMTs and Firefighter/Inspectors. *See e.g., Borough of Point Pleasant Beach and PBA Local 106*, IA-2012-001 (Mastriani, September 16, 2011 at p. 38) ("the Borough's proposal, if awarded, could unduly erode its relative standing with other comparable law enforcement units, thereby having the potential to threaten the continuity and stability of the Borough's police officers.").

The IAFF argues that the Fire District cannot point to a single jurisdiction with a 25 Step guide. The IAFF notes that most of the jurisdictions it cites have guides ranging from 7 to 10 steps. Moreover, the IAFF submits that in those jurisdictions with a negotiated salary increase in 2019 and thereafter, every increase is at 2%, with the increase placed upon all steps in contrast to the proposal offered by the District.

The IAFF submits that an examination of the impact of the Fire District's proposal on the surrounding districts of Mount Laurel and Cherry Hill, which are the districts closest in size and geographic proximity to Evesham, demonstrates a huge reversal in rank as a result of the Fire District's proposal. The IAFF argues that if the Fire District's salary proposal is granted, the IAFF members will be making anywhere from \$128,000 to \$415,000 less over the life of their career than is being paid to Firefighters in Cherry Hill and Mount Laurel. The IAFF maintains that the Fire District's proposal results in a reversal in comparative rank and standing. This swing is extraordinary, taking the Department, one of the better paying districts, based upon the demands of the job, experience of the employees, and structure of its Guide, and turning it into a significantly worse paying jurisdiction than either Cherry Hill or Mount Laurel, for no reason other than the District's Commissioners believe that the top step in the existing Salary Guides is too high.

The IAFF acknowledges that the Fire District existing Salary Guides are advantageous arguing the hiring requirements in the Fire District are more stringent with the Fire District hiring more experienced personnel. The IAFF notes that Fire District employees are required to perform both EMT and firefighting duties and note that the Fire District Firefighters produce revenue for the District, and construction code revenue for the Township. They also point out that the IAFF salaries include holiday pay, longevity, and a \$1,500 EMT stipend, which inflate the salaries.

The IAFF argues that as a result, retention, which has never been an issue in the Department, will become a serious one. The IAFF argues that the Fire District's proposed guide is a direct assault on the continuity, stability, and morale of the existing work force, which not only adversely impacts the employees, but equally impacts the interest and welfare of the public, which has benefitted from a highly professional, stable, and dedicated group of

individuals. The IAFF submits that Fire District will be unable to retain its existing employees, and/or attract experienced employees in the future, if its proposal, or anything remotely close to its proposal is granted.

The IAFF argues that interest arbitration was never designed to significantly alter the status quo between surrounding jurisdictions, but enacted to maintain stability and equilibrium between jurisdictions, and between bargaining units in the same jurisdiction. The IAFF argues that the proposal being advanced by the Employer is contrary to that overriding principle, which has governed interest arbitration decisions since passage of the Act.

The IAFF argues that that the Fire District's proposal is not based upon an economic need to restructure the guides or inability to pay. The IAFF submits the Fire District never made such arguments. Rather, the Fire District Board Commissioners believe that no Fire Fighter should be paid significantly more than \$120,489.

Finally, the IAFF argues that the Fire District cannot rely upon the SAFER Grant, and its intention to hire 12 additional Firefighters by March of 2020 (eight under the grant and four who are required to be hired before the Fire District is able to take advantage of the grant), to justify its salary guide reconstruction. First, the IAFF notes that none of these employees have been hired. Future hires are speculative and cannot be considered in connection with any proposed cost or award, with or without grant funding. Second, the IAFF notes that the SAFER grant application underscores that the Fire District has enough resources to hire 12 additional Fire Fighters utilizing the existing Salary Guides. The IAFF notes that the grant application, which requires the Fire District to become solely responsible in March of 2023 for 12 additional employees was not based upon a restructured guide but predicated upon step increases under the existing Salary Guides. Further, the IAFF notes that as a condition of the SAFER Grant, the Fire District had to certify that it has the ability to assume the full salary and benefit costs after the phase- out of grant resources in March of 2023, thereby conceding its ability to pay a significant increase in salaries beyond the three year grant period, without any need to alter the existing Salary Guides.

The IAFF maintains that the Fire District has failed to provide evidentiary support for such a radical change in the status quo. Further, if granted, these changes would seriously impair the continuity and stability of the existing workforce, and erode the Fire District's ranking with surrounding jurisdictions, is contrary to the public interest of taxpayers and residents of Evesham, and contravenes the fundamental principles and philosophy underlying interest arbitration.

#### B. Fire District EMT Only Guide

The IAFF also maintains that the Firefighter/EMT guide which has been negotiated over three decades does not warrant the kind of draconian modifications which the Fire District has proposed. The current top step in 2019 under the IAFF's proposal for a Firefighter/EMT will be \$108,590 at Step 25. The top step in Voorhees at Step 16 is \$103,468, and in Cherry Hill, \$111,161 for Fire Fighters hired prior to January 1, 2012 and \$102,808 for Fire Fighters hired after 2012. This fails to consider that because longevity, holiday pay, and the EMT stipend are

encompassed within the IAFF salary, the actual base salary for an Evesham Firefighter/Inspector is \$108,037.08, and Firefighter/EMT is \$97,233.36, once the 6.5% in longevity, over \$3,000 in holiday pay, and \$1,500 EMT stipend is removed. This results in the Firefighter/EMT salary in the Fire District lower than the salaries in Cherry Hill and Voorhees, and Firefighter/Inspector salaries lower than that paid to experienced Fire Fighters in Cherry Hill. The IAFF submits that this disparity does not warrant a wholesale destruction of existing Salary Guides, particularly where in Cherry Hill and Voorhees, employees are Fire Fighters only and receive retiree medical benefits.

The IAFF also argues that the Fire District has failed to offer sufficient evidence to overcome its burden to award its proposal to alter the status quo and create a 25-step stand-alone EMT guide. The IAFF maintains that there is no evidence in the record which warrants changing the established practice of combined Firefighter/EMTs providing fire and emergency medical services to residents and taxpayers of Evesham Township. The IAFF submits that the District failed to proffer any evidence indicating that the current staffing pattern is unable to continue to adequately serve the Fire District, no longer cost effective, and/or requires the immediate creation of an EMT-only, full-time career position that cannot be handled through the hiring of additional Firefighter/EMT positions, or by the existing workforce.

The IAFF maintains that where there is an established practice of servicing the Fire District for over 30 years through a combined Firefighter/EMT model, the Fire District faces the heavy burden of justifying a change in that status quo. The IAFF submits it has failed to submit evidence supporting such a significant divergence from the existing staffing arrangement which have served the District and its residents well over the past 30 years. Second, the IAFF argues that hiring EMT-only positions will result in disruption of existing staffing relations, and likely create internal dissension within the bargaining unit, by requiring existing employees to work side-by-side with employees who perform no fire suppression work, and have different interests and concerns. Creation of this stand-alone position undermines the stability of the existing workforce and is a recipe for friction and internal disruption. Third, the Employer failed to negotiate any contractual provisions which are necessary to hire EMT-only employees.

The IAFF submits that since EMT-only employees are civilian employees, they would not be covered under the existing overtime and work schedule provisions in the parties' contract and are outside of the purview of Section 207(k) of the Fair Labor Standards Act, which is applicable to police and fire fighters. *See, e.g., Lawrence v. City of Philadelphia*, 527 F. 3d 299 (3d Cir. 2008); *Cleveland v. City of Los Angeles*, 420 F.3d 981 (9<sup>th</sup> Cir. 2005). The IAFF notes that the existing contract is silent as to EMT-only work schedule and applicable overtime provisions, all of which are negotiable. Other than proposing a salary guide, the IAFF submits the Employer has not negotiated any other terms and conditions of employment, including vacation, sick leave, physical fitness, training or education, holidays, or anything else which is a prerequisite to employ an EMT as a stand-alone career position. Moreover, unlike existing employees who are enrolled in PFRS, stand-alone EMTs are enrolled in PERS, a completely different pension system. The District has neither negotiated or suggested any

contractual provisions which are relevant to seriously consider and evaluate the proposed EMT-only Salary Guide advanced by the District.

The IAFF maintains that the Fire District has failed to establish any justification for its proposed 25 Step Guide EMT Only Guide. The IAFF submits that this proposed guide is inconsistent with the existing Salary Guides for Firefighter/EMT positions, and the Fire District has offered no evidentiary basis for the EMT-only Salary Guide which it has proposed.

### C. IAFF Salary Proposal

In contrast to the Fire District's wage proposal, the IAFF submits that its salary proposal offered is modest and reasonable, promotes the continuity and stability of the existing workforce, is consistent with other wage increases granted, protects the interest and welfare of the public and the District's ability to pay, and comports with all of the statutory criteria.

The IAFF's proposes a static guide in Steps 1 through 9, with no cost-of-living increases for five years of the contract; no cost-of-living increases for any employee in 2019; and a 1.5% increase on Steps 10 and above from 2020 through 2023. This wage increase for the Firefighters from Steps 10 and above, which is approximately half of the bargaining unit, amounts to 1.2% annually over the life of the contract it submits.

The IAFF submits that this proposal is fair and sensible. The IAFF notes that the proposed wage increase is significantly smaller than any increase ever negotiated during the past 20 years; 2000-3.5%, 2001-3%, 2002-3%, 2003-3%, 2004,3.5%, 2005-3.85%, 2006-3.85%, 2007-3.85%, 2008-3.85%, 2009 2.95%, 2010-3.25%, 2011-3.75%, 2012-3.95%, 2013-3.95%, 2014-2.49%, 2015-2.4%; 2016-1.85%; 2017- 1.85%, and 1.75% in 2018.The IAFF notes that each of the above increases were placed on all of the steps of the Guide. According to the IAFF, this is the first contract in the past 20 years where the IAFF is proposing no cost-of-living increase on the first 9 Steps of the Guide for the life of the contract.

The IAFF submits its proposal is consistent with the wage increases granted to existing represented and non-represented employees in the Fire District. In 2019, employees in the FMBA received an average salary increase of 1.77%, with increases ranging from 1.3% to 2.73% and salaries for Lieutenants in2019 paid at \$132,138.84 and for Captains \$138,37.90. Ms. Mitchell received an 8.7% increase in 2019 and a 2.4% increase for 2020.

The IAFF submits its proposed increase is warranted when considering the increased demands that have been placed upon the current employees. Since January 1, 2018, the number of bargaining unit members have declined from 26 to 21. While there has been a significant decline in staffing, there has been an increase in calls for service, placing greater burden on the existing workforce to protect the public. For example, in 2014, there were 23 Fire Fighters at the start of the year and the career staff handled 2,773 service calls. In 2018, although there were also 23 staff members, calls for service increased by 36% to 3,781.

The IAFF submits its proposed salary increase is particularly appropriate when judged against the jurisdictions which the Fire District contends are comparable. The IAFF strongly

disputes that the fire districts which the Employer cites as comparables are remotely comparable and/or that the Fire District has demonstrated comparability. According to the IAFF, there is not a single jurisdiction that received less than a 2% salary increase, nor is there a single jurisdiction where cost-of-living increases have not been placed on all of the steps. If anything, the IAFF submits its proposal is well below the going rate in surrounding jurisdictions. The IAFF submits that its proposal is less than 2% per year increases in Cherry Hill, Mount Laurel, and Voorhees which the IAFF argues are comparable to the Department in size and geographic location. In contrast, the IAFF notes that here it has proposed no increase in 2019, and 1.5% for the remaining four years.

The IAFF submits its wage proposal, consisting of annual step movement based upon a static guide over 5 years, and an average cost-of-living increase of 1.5% over five years is entirely reasonable and consistent and well below the internal and external pattern of settlement. This, they argue, is in contrast with the Fire District's wage proposal, which is at-odds with any guides or settlement anywhere in New Jersey, and certainly not warranted by the Fire District's healthy financial condition.

The IAFF submits its wage proposal is also below what the unit should receive based upon the cost of living. The IAFF submits it has proposed no increase in 2019, and 1.5% for the remaining four years of the contract, resulting in an average salary increase of 1.2% for the duration of the Agreement. They argue that the proposed increase is below the CPI for 2019, which is likely to be 1.8%, and below the projected CPI from 2020 through 2023. The IAFF submits its proposal results in salary increases from Step 10 and above not keeping pace with the projected increase in the CPI over the life of this contract.

#### D. Financial Impact

The IAFF submits it is well aware that in analyzing its salary proposal and specifically the interest and welfare of the public under N.J.S.A. 34:13A-16g(1), the Arbitrator must assess the financial impact of any awarded increase, the effect of the Award on the Fire District's taxpayers, and its effect upon the lawful authority of the Employer, the tax cap levy, and any other statutory restriction upon the Fire District.

The IAFF maintains that as Dr. Caprio explained in his Economic Report, the difference between the two proposals is approximately \$208,625 over the life of the contract. The IAFF submits that given the Fire District's budget, fund balance, annual increase in assessed valuation, available tax cap levy, and excess budgeted resources from 2019, there is no statutory restriction upon the Fire District's ability to fund the IAFF's wage proposal.

The IAFF submits that the IAFF and Fire District proposals for 2019 are virtually identical establishing a base 2019 cost of \$2,290,700. Between 2019 and 2020, the incremental cost varies from \$70,000 (Fire District adjusted cost) to approximately \$84,000 (IAFF proposal with no breakage), a difference of approximately \$17,000.

The IAFF submits that at an \$84,000 increase (IAFF), the average cost increment per Evesham homeowner is \$4.34 per year, while at the Fire District increase of \$70,000, the

average annual impact per homeowner is \$3.52, a difference of less than \$1.00 per year per each average residential parcel.

In 2021, the IAFF submits that the full cost increment of its proposal is approximately \$102,000 more while the adjusted Fire District proposal increases by approximately \$58,500. This, they argue, is an annual average homeowner increase of \$5.27 for the IAFF proposal and \$3.18 for the Fire District proposal, a difference of \$2.00 annually.

The IAFF proposal it submits increases \$100,082 in 2022, while the Fire District proposal increases \$33,500. The IAFF proposal results in an annual average impact on homeowners of \$5.18 in 2022 compared to the Fire District proposal of \$1.74.

The IAFF argues its proposal increases approximately \$115,758 in 2023 compared to the Fire District increase of \$31,000. In this case, the average homeowner impact is \$6.15 annually per the IAFF proposal, while it would be \$2.00 annually for the Fire District proposal, or an annual difference of \$4.15.

The IAFF submits that the differences in the two proposals are minor in total cost, typically \$2.00 to \$3.00 per year for the average homeowner; further, it argues additional resources are available to support these requirements. The IAFF maintains that the Fire District has the ability to pay without negative impact on the community due to breakage, available CAP, and excess budgeted resources. This, they argue, must be assessed against the impact on service levels as 11 of the unit's 21 active firefighters will receive less than a 2% raise over the five-year period. This, they argue, is less than 0.5% annually at a time when inflation is averaging between 1.75% and 2.0%.

The IAFF argues that every increase of \$100,000 per year in the Fire District results in an increase of \$5.17 per parcel. Given the extent of residential taxpayers in the Township, the increased cost of the IAFF's proposal on residential taxpayers it submits is *de minimis*. The IAFF argues the tax burden in the Township is extremely moderate. During four of the last five years, the IAFF submits that the Fire District's tax levy has remained unchanged. The Fire District Tax Levy has remained virtually unchanged between 2014 and 2018 at \$0.137. Between 2018 and 2019, District property value increased an additional \$64,235,279, or 28% more in one year than the preceding four years. The IAFF submits that the decision to increase the Fire District Tax Levy by \$842,951 (albeit mostly for other than wages and salaries) is evidence of the Fire District's "Ability to Pay" since additional costs generated by the IAFF proposal beyond that of the District yields an average additional burden of \$2.69/year/residential parcel.

The IAFF contends that the Fire District cannot blame the IAFF because it failed to act in a fiscally prudent fashion by its calculated decision not to raise taxes and/or not to use any of its available tax cap bank. The IAFF points out that Dr. Caprio noted that although the Fire District has the second largest budget amongst County fire districts, its tax rate through 2018 is only 8<sup>th</sup> highest. The IAFF submits that the Fire District's tax rate is in the middle of the rate amongst Burlington County Districts. The IAFF submits that if the Fire District is forced to raise an additional \$100,00, the comparative impact on a residential taxpayer in the

Township is \$5.17, resulting in the fiscal impact being greater in 38 of the other 40 Burlington County municipalities. The IAFF highlights that Dr. Caprio concludes that the IAFF's proposal will not have a detrimental impact upon the District and its taxpayers.

The IAFF notes that the settlement costs for both the District and IAFF proposals are identical in 2019; hence marginal costs between the two proposals exist only for the 2020 through 2023 period. The IAFF submits that the marginal costs beyond 2019 for the Fire District proposal represent approximately \$193,300, while that for the IAFF is approximately \$400,000, or \$41,000 more per year spread across 15,454 residential properties. The annual average difference on Evesham homeowners is approximately \$2.00 annually over the duration of the proposed contract.

Although total appropriations increased \$990,339 of that amount \$593,000 (or approximately 60%) were for Capital appropriations, a portion of which are not likely to be repeated. These were appropriations which the District opted to cover from Fund Balance rather than bond notes the IAFF.

The Fire District's starting fiscal year Fund Balance of \$3.772 million was the second largest since 2014, only marginally lower than the \$3.833 million fund balance concluding 2018. The Fire District continues to have ample flexibility under the property tax levy cap. The District has a tax levy bank of \$540,395 (Prior year 2018 available for 2020 Budget). This amount would be available in addition to the 2% current increment (\$160,391) plus exclusions (e.g. \$650,533 in 2019) and new value (\$48,886 in 2019). Given that the difference on an annual basis is barely marginal, the IAFF argues there is ample revenue resources to fund the IAFF proposal and there no statutory and levy cap limitations upon the District's ability to fund the IAFF's salary proposal.

The IAFF submits that the differential cost-out between the two proposals is approximately \$159,000 to \$210,000 over a five-year period. Further, it submits the Fire District has experienced confirmed breakage in 2019 of approximately \$80,000 (Robertson and Gallagher), an amount benefitting both proposals, but importantly represents savings that contribute to the cost differential between the Fire District's offer and the IAFF proposal, thus eliminating an ability to pay issue had there been one, which there is not. Replacements for Robertson and Gallagher would have likely started at Step 1 on the EMT/FF guide, at the IAFF Proposed \$51,771 (and fully funded by the Fire District). Thus, additional breakage will be generated each year from the 2019 separations totaling a net savings of approximately \$60,000 from 2020 through 2023.

Finally, the IAFF notes that there should be excess budgeted resources from 2019. As shown in the Fire District's 2019 Budget, \$2,495,000 was budgeted for firefighter salaries, of which, only \$2,290,700 was used, creating an excess of \$167,088. When proportional savings in fringe are considered, this increases the unused resources to approximately \$275,500.

In short, the IAFF argues the Fire District is in sound financial shape. It has a tax cap bank of \$903,723 available for use in the 2020 budget. The District has a high ratable tax base, and is anticipating an increase in ratables of \$30,966,700, or approximately \$47,379.05 to



be applied to any budget increase in 2020. It ranks near the median in residential taxation in the County. It continues to generate and regenerate a healthy Fund Balance since 2014 and is likely to do so again. In the past, the District has utilized its Fund Balance to reduce any tax increase, having used \$950,00 for the Fiscal 2019 Budget to offset any tax increase. Further, it will have substantial excess revenue from its 2019 Budget (in excess of \$275,500), as a result of overstating the number of career Firefighters on staff and having estimated that it intended to hire six additional Fire Fighters in 2019 and hiring none.

The IAFF argues that the Fire District has not and cannot reasonably contend that there are any statutory or budgetary limitations on its ability to fund the IAFFs wage proposal. In light of the current tax burden on Fire District taxpayers; the Fire District's past calculated decision to forego any tax increase for four years and allow banked tax cap revenue to lapse; to apply Fund Balance towards capital expenditures in lieu of borrowing, and its continued increase in assessed valuation and Fund Balance, the Employer cannot argue that the IAFF wage proposal will harm the Fire District's taxpayers.

Under the totality of the circumstances, the Association argues its modest wage proposal which advances the interest and welfare of the public, is necessary to protect the continuity and stability of employment, is consistent with the statutory criteria, and effectively balances the needs and concerns of the taxpayers in Evesham Township with the interests of the bargaining unit. It should be granted in its entirety. It is fair and equitable to the employees, the District, and Evesham's taxpayers.

## **IAFF Response to Other Fire District Proposals**

### **Elimination of shift differential**

Article 5, Section F of the Agreement establishes shift differential of 7%, providing as follows:

F. Shift differential of seven percent (7%) will be paid if a regular shift is created outside of the 05:00 to 18:00 work period, Monday through Friday.

Under the terms of the Agreement, shift differential applies only to an actual shift outside of the 05:00 to 18:00 work period Monday to Friday. That is, any negotiated shift before 5:00 a.m. and after 6:00 p.m. on weekdays, and any time Saturday or Sunday. It is inapplicable to a Firefighter/EMT or Firefighter/Inspector who is called into work on the weekend, or any hours before 5:00 a.m. or after 6:00 p.m., as work during those hours is treated as overtime.

Shift differential has been in the IAFF's contract with the District for 25 years and is designed to compensate officers for the inconvenience of working nights and weekends, which is often disruptive to family and personal life. Under the Agreement, the District remains in complete control of shift differential, since no payment is made unless and until the District

and the IAFF agree to a shift outside of the 05:00 to 18:00 Monday through Friday existing work schedule.

Shift differential remains in the recently executed FMBA contract (Article 4, Section D at p. 7 in the 2014-2018 contract, and at p. 3 in the 2009-2013 contract), and is included in Article XI of the FOP contract with Evesham Township for any employee who works 12 hour shifts (Exhibit 23, Article XI, Section G at p. 21). The IAFF argues it is unreasonable to continue to provide payment of shift differential to Fire Officers under the FMBA contract to supervise any negotiated shift before 5:00 a.m. and after 6:00 p.m., but to eliminate that payment to Fire Fighter/EMTs carrying out the duties on any such negotiated shift.

The IAFF submits the District has failed to offer sufficient evidence to overcome the burden to award its proposal to alter the *status quo* and eliminate shift differential from the parties' Agreement.

**Elimination of reimbursement of earned sick leave for any employee discharged for cause**

Article 9, Section 6 of the parties' contract, mandates that a discharged employee forfeit any earned sick leave in the year he or she is terminated, but is entitled to payment for sick leave earned in prior years, stipulating as follows:

Employees retiring or resigning shall be compensated one-half (½) of their accrued sick leave. Payment shall not exceed five hundred and twenty-eight (528) hours. In the event of retirement, the employee may retire 528 hours early in lieu of such 528 hours of pay. Employees terminating employment as a result of disciplinary action shall not be entitled to compensation associated with sick leave accumulated in the current calendar year, however, said employees would be entitled to compensation associated with sick leave (not to exceed 528 hours of pay) accumulated prior to January of the year of termination. Recognizing that sick leave accrued but unused is an earned benefit, this provision represents a balanced approach. It limits reimbursement to 50% of accrued sick leave, capped at 528 hours, denies reimbursement of any sick leave earned in the employee's last year of employment, but requires reimbursement of sick time earned during prior years of service. By awarding partial reimbursement of sick time to employees terminated for cause in Article 9, Section C, the parties acknowledge that employees are entitled to be compensated for this accrued time, while simultaneously conceding that there should be a penalty imposed for misconduct.

The IAFF submits that the Fire District has offered no evidence justifying its effort to excise this benefit from the parties' contract. It has not demonstrated that it undermines Department operations or offends public policy. That nobody has been discharged, and therefore the Employer has never recently paid this benefit, is not grounds to remove it from the contract in the event it occurs in the future.

The earned sick leave provision remains in the FMBA contract, found in Article 31, Section B. It is disingenuous to continue to grant this benefit to superior officers, who because of their rank are held to a higher and more rigorous standard, and sick leave days are worth more, but to deny this protection to rank and file Fire Fighter/EMTs, who are protecting the Township's residents and visitors, at great personal risk, every day of their working life.

The IAFF submits the District failed to offer sufficient evidence to overcome this burden to award the District's proposal to alter the *status quo* and eliminate reimbursement of sick leave to discharged employees from the parties' Agreement.

**Replacement of contractual sick leave donation program with the Fire District's catastrophic illness program**

Article 20, Section E enumerates a sick leave donation program, allowing for the transfer of unused sick leave to another employee in the Department, subject to the approval of the Board, as follows:

E. Uniformed Career Employees, with approval of the Board, may transfer unused sick leave to another employee within the department. The Board shall not unreasonably withhold such approval.

As testified by Firefighter Brinker, this program has been utilized by the parties in the past without incident, problem, or difficulty, most recently covering Firefighter Robertson, who retired in the summer of 2019 on disability. It is a flexible program, not conditioned upon a life-threatening illness, but allowing donation of sick time to any employee in need.

The IAFF submits that Fire District seeks to replace this contractual protection with a complicated and at times convoluted three-page plan, not based upon any model protections, or designed to respond to any identified lapse in the existing practice. The IAFF argues the Fire District's catastrophic illness policy does not enhance employee protection, but significantly narrows its scope, reduces the benefit, creates a multitude of potential problems, and opportunity for disputes over interpretation and scope of coverage.

The IAFF submits that that District offered no evidence during the hearing that the existing contractual language and established practices have ill-served the District, management, or bargaining unit members.

The IAFF submits the District failed to offer sufficient evidence to overcome the burden to award the District's proposal to alter the *status quo* and eliminate the existing contractual sick leave donation program and replace it with the District's complicated and convoluted Catastrophic Illness provisions.

### **Proration of sick and vacation leave in the year of retirement**

Vacation leave under Article 8 and Sick Leave under Article 20 of the Agreement has been uniformly credited at the start of the year, and employees are able to use, or be paid for the time even if resigning or retiring before the end of the year. Nothing in the Agreement conditions the use of that time upon time worked or continued employment, and unit members are entitled to all of their time even if out-of-work on long-term illness or a work-related accident.

Article 9, Section A provides that retirees may take the unused portion of their vacation time or be paid for it, except vacation payments shall not exceed 352 hours. Section C provides that retirees or resigning employees shall be compensated for one half of their accrued sick leave, not to exceed 528 hours, with retirees entitled to be paid for that time, or to credit it towards early retirement.

The IAFF argues the District, without offering language, a formula, or rationale, seeks to limit reimbursement during the year the employee retires to a prorated payment based upon date of retirement, and offers no justification for a change in this longstanding practice.

In contrast, the IAFF argues there are a number of reasons why the current practice should remain unchanged. First, leave time is credited at the beginning of the year and never conditioned upon continued employment. The Employer offered no logical reason why the practice adhered to during an employee's first 24 years of employment, should not be followed in the last year of employment. Second, this has been a longstanding practice which all employees, including current employees, have reasonably relied upon. Third, reimbursement for sick and vacation leave is already limited and circumscribed at time of retirement. Fourth, since the District's proposal is not meant to impact vacation or sick time earned prior to an employee's retirement year, this proposal will have virtually no immediate impact upon the District's overall finances or overall operations. Fifth, the existing parties' contract is bereft of any formula for the proration of sick and vacation leave, and the Employer offered no testimony explaining the reason for its proposal, the precise harm it was seeking to rectify, and/or any compelling difficulties which have resulted from the existing contract language.

The IAFF submits the District did not cite a single example evidencing that the current practice has impacted an employee's chosen retirement date. Change for change sake is not a legitimate justification to alter the *status quo* suggests the IAFF.

### **Training and Education**

Article 21 provides, in pertinent part, as follows:

Tuition Aid shall be provided to encourage employees to develop themselves through academic courses that may prepare them for advancement within the Department.

The Board, upon the prior approval of the Chief, will pay the tuition, book expenses, and associated fees for any employee further his/her education by taking courses or

enrolling in an accredited degree program which prepares or advances the employee's knowledge in the emergency services field.

The maximum amount to be paid under this plan is \$6,000 per calendar year per employee with a total cap of \$36,000 for all employees per calendar year. Provisions of this article may also be applied towards the employee's professional development. The Board will only provide payment for tuition and books, which in conjunction with financial aid or compensation received from other sources, will defray tuition and book expenses. The Board will not, in conjunction with financial aid and compensation received from other sources, provide compensation when such combined payments exceed actual tuition and book expenses. The Board shall pay for tuition and associated fees when an employee enrolled in an approved course under this plan.

In order to receive education assistance, it shall be necessary for an employee to submit appropriate cost estimates, application for tuition payment form and, if requested, evidence of attendance to the Chief of his/her designee.

The IAFF submits that the District is one of the only jurisdictions in New Jersey (and there are none in South Jersey), which requires at least 60 college credits as a condition of hire. Of the 21 Fire Fighters, four have a Master's degree, ten have a college degree, and six have an Associate degree. The 47.6% of Department Firefighters with a Bachelor's degrees are more than twice the national average for Fire Fighters and EMTs. Not only do two-thirds of the existing workforce have either a Bachelor's or Master's degree, but nine members, or about half of the unit, have used tuition reimbursement to complete their degrees. An educated work force provides substantial benefits to the District and its residents. The District's hiring policy and tuition reimbursement is testament to the value that the District places upon an educated workforce, and its contribution to enhancing the protection, safety, and welfare of its residents.

The District seeks to modify the program to tie the amount of reimbursement based upon a formula related to the grade received, with 100% reimbursement for an A; 90% for a B; and 80% for a C. The District also seeks to limit reimbursement to a single degree per level (e.g., one degree for Associate, Bachelor, and Masters), and rather than advancing the money, only reimbursing the employee upon completion of the course. The IAFF has no objection to either of these changes in the existing practice.

The IAFF argues the Employer has offered no justification for such an arbitrary formula, nor has it offered any evidence that there have been problems in the past, or somehow employees have not taken reimbursed courses seriously. A letter grade has no relationship to the benefit obtained by the individual student and/or the District. Nor is there any evidence that any employee who took classes paid for by the Employer, did not exert effort because reimbursement was not conditioned upon the grade received. Grades can be subjective, and there is no demonstrated correlation between a letter grade and an employee's effort and/or value derived from instruction.

The IAFF has responded to the District's proposal, by countering that tuition reimbursement be limited to those classes where the employee receives a grade of "C" or

higher. This advances the District's goal that employees take those classes seriously, while eliminating the Employer's arbitrary and rather subjective formula for reimbursement. Although the District has failed to offer sufficient, or indeed any evidence, to overcome the burden to alter the *status quo* and modify Article 21 regarding tuition reimbursement, any conditioning of reimbursement upon grades should be limited to reimbursement upon receiving a "C" or higher in any course taken, rejecting the Employer's attempt to base reimbursement upon the letter grade received.

### **Elimination of Opt-Out**

The Fire District has proposed elimination of the opt-out language in Article 15, Section C, which provides as follows:

C. Option Out of Health Care Benefits. For those using the option out of health care benefits, compensation equal to the lesser of 25% of premium costs, or \$5,000, shall be paid to employee by lump sum payment in December of the year coverage is waived. Waiver must be done in accordance with the Board's Waiver Agreement.

The IAFF argues that opt-out has been in the parties' contract for many years; remains in the FMBA contract; remains in the Assistant Business Administrator, Business Administrator, and Police Chiefs contracts, and in the Township's contract with the Police. If unit members enroll in health insurance in lieu of opt-out, it could cost the District in excess of \$60,000 annually. According to Ms. Mitchell, the District has not voted to eliminate the opt-out payment and does not intend to terminate the payment to existing bargaining unit members. Rather, it wishes to excise the language only from the IAFF contract.

N.J.S.A. 40A:10-17.1 provides that the decision of the Employer to allow waiver of coverage and the amount paid "shall not be subject to the collective bargaining process." However, that is not at issue here argues the IAFF. The District is not asserting that it has decided to terminate coverage - indeed it is claiming that it has no intention to do so. Rather, it is using the opt-out provision as a sword, to eliminate the contractual protection for one group of bargaining unit members but retain the identical language for all other represented employees. Although the District is free to eliminate opt-out, it must do it uniformly across-the-board, and cannot selectively provide it to one group of represented employees and deny it to different organized group. This is not disparity in treatment between represented and non-represented staff, but disparate treatment regarding health care benefits between the only two represented units in the District. Therefore, as drafted, the Employer's proposal to eliminate opt-out should be rejected.

### **Elimination of Section "D" in the Fire Inspector Clause**

The District has proposed the elimination of Article 37, Section D in the Fire Investigator Article, which provides that the Board will use its best efforts to maintain a minimum number of four qualified individuals to serve on an as-needed basis, as a Duty Fire Marshal to be available during non-business hours, providing as follows:

- A. Minimum Number of Duty Fire Marshals - The Board will use its best efforts to maintain a minimum number of four (4) qualified individuals to serve as a Duty Fire Marshal. Should at any time there be no qualified individual willing to serve on a voluntary basis as a Duty Fire Marshal, the Board strictly reserves the right to mandatorily assign such duty. In the event that the number of voluntary participants does become less than four (4), the Board shall as soon as practicable, initiate the process of soliciting and selecting additional career firefighters who are willing to serve as Duty Fire Marshals on a voluntary basis.

The District claims the provision is non-negotiable.

Article 37 establishes that the Deputy Chief of the Division of Fire Prevention (hereinafter referred to as the 'Fire Marshal'), shall designate a qualified person, known as the Duty Fire Marshal, to be available during non-business hours (between the hours of 6:00 p.m. and 7:00 a.m., Monday through Friday and on weekends and non-working holidays), for the purpose of conducting fire investigations and the performance of any needed code enforcement activities, on an on-call basis. The assignment is available for a week and is compensated at \$250 per week for having freedom of movement restricted and forced to respond to duty off-shift.

The Article provides in Section C, that at least annually, the Board shall solicit applicants amongst career Fire Fighters to serve as the Duty Fire Marshal, but the Fire Marshal "shall have the sole discretion to determine the individuals who are eligible and qualified to serve as Duty Fire Marshals and shall make such assignments." It provides that qualified members of the Division of Fire Prevention will be selected first.

The District does not object to any of these provisions. Rather, the Employer challenges Section D which indicates that the District will use its best efforts to maintain a minimum number of four (4) qualified individuals to serve as a Duty Fire Marshal, reserves the right to the Board to mandate assignment to the Duty Fire Marshal should there be no qualified individuals willing to serve on a voluntary basis, and in the event the number of voluntary participants is less than four, the Board as soon as practicable, shall initiate the process to solicit and select additional career Fire Fighters willing to serve as Duty Fire Marshal on a voluntary basis. The IAFF argues that contrary to the District's claim, nothing in Section D interferes with the Employer's managerial prerogative. The Section does not impose any requirements upon the District, other than to use its best efforts. It does not require the District to designate a Duty Fire Marshal. It does not impose a penalty upon the Employer for failing to appoint four Fire Marshals, or for failure to do anything under the provision. None of these individuals serve until and unless the Duty Fire Marshal is unavailable.

The IAFF submits that this Section does not interfere with management's right to select the Duty Fire Marshals, nor limit the Fire Marshal's sole discretion to determine eligibility, qualification, and assignment of the Duty Fire Marshal. As drafted, Section D establishes a procedure that not substantially different than Section C ("The Board ... not less than annually, solicit applications from among the career firefighters for individuals interested in serving as

Duty Fire Marshal"). It is a permissive subject of bargaining, which does not unduly interfere with any managerial prerogative.

The identical clause exists in the FMBA 2019-2021 contract, and there is no evidence that it interferes in any fashion with management's rights and obligations. Rather, this Section represents a balanced approach to ensure that there are Duty Fire Marshals available to cover this work on a weekly basis, while at the same time recognizing the District's exclusive right to select and assign the candidates.

The IAFF submits that Section D does not interfere with the District's managerial prerogative and the District has failed to offer any justification for excising the Section from the parties' contract.

### **Deletion of drug and alcohol policy in favor of district- wide policy**

The District has proposed the elimination of Article 41, the Drug and Alcohol Policy in the parties' contract, and replace it with a District-wide policy, which was not attached or referenced anywhere in its proposal.

In response, the Association is prepared to substitute the revised drug testing levels as set forth in Article 35, Paragraph E, Section 6 of the Drug and Alcohol Policy in the FMBA contract, with the current testing levels in Article 41, Paragraph E, Section 6 of the Drug and Alcohol Policy in the Association's existing contract.

Otherwise, the IAFF argues it is not in a position to respond to any proposed change in the existing Drug and Alcohol policy, where the Employer has made no effort to explain, justify, or reference the policy it is seeking the Arbitrator to approve.

Other than updating the levels in the existing Drug and Alcohol Policy, the IAFF submits that District has failed to offer sufficient evidence to overcome the burden to award the District's proposal to alter the *status quo* and to make any other changes in its existing Drug and Alcohol Policy set forth in Article 41, especially when it failed to identify any changes which it seeks.

## **Other IAFF Proposals**

### **Residential stipend**

The Association has proposed a 1% stipend for any Fire Fighter residing in Evesham Township, providing as follows:

Each Officer that resides within the Township of Evesham shall be entitled to residential stipend payments of one percent of their annual salary each year. Such payment shall be made the first pay period in December.

They submit this proposal is consistent with 1% residential stipend in the current FMBA contract and available to all Fire Officers.



The residential stipend serves two purposes. First, although prevented from creating residency requirements for Fire Fighters and Police, it allows the Fire District to create a financial incentive to encourage bargaining unit members to reside in the Township and economically support the District. Encouraging Township residence provides a direct economic benefit to the Fire District and Township businesses and enhances employee commitment to the job and surrounding community. Second, retaining Township residents increases response time in cases of emergencies and other times of need.

The District's only defense is that the stipend costs money-money that the District gets back in tax payments from employee-residents and increasing the likelihood that unit members will patronize Township merchants. Ironically, the District is prepared to pay the stipend to the much higher paid Lieutenants and Captains, who do not perform the same Fire Fighter and EMT work, but refuses to offer the stipend to those lower paid employees who can actually make a difference and enhance District operations.

The Association submits it has established sufficient evidence to warrant the Arbitrator to award its proposal to alter the status quo and grant a resident stipend. The District has failed to demonstrate any legitimate reason why rank and file Fire Fighters should be treated differently than those in the FMBA regarding payment of this residential stipend.

#### **Entitlement to compensatory time in lieu of compensation in case of overtime**

The Association has proposed that Article 5 of the existing contract, entitled Overtime/Shift Differential, be modified to provide either payment for overtime as it currently exists, or for the use of compensatory time at 1.5 times the existing rate. The Association seeks no other changes in this Article.

FMBA members have always had the option of obtaining compensatory time or paid compensation in cases of overtime.

The IAFF seeks nothing more than the option to take overtime in cash or in time, which is currently available to the Fire Officers under the FMBA Agreement. There is no legitimate reason to treat the rank and file Fire Fighters differently from the Fire Officers in connection with overtime compensation.

In response, the District claims that because compensatory time can be carried over and then paid at a higher rate than the hourly rate at which it was accrued, it creates a potential economic difficulty for the District. There are at least three problems with that argument. First, the District permits the higher paid Officers to utilize compensatory time, and there should be no reason why the economic concerns which the District expresses regarding potential payments to Fire Fighters, are any more serious of an economic problem than the payment to Fire Officers, who are already entitled to compensation at a higher hourly rate. The District has offered no evidence that its fear regarding paying compensatory time at a higher rate has ever been an issue under the FMBA contract. Second, the Association is not seeking payment for compensatory time. Fire Fighters already are able to be paid overtime. This was not meant as a vehicle to enhance overtime payments through the use of compensatory time. Rather, this

was an effort to permit Fire Fighters to take time off in lieu of being paid overtime. Third, the Association is not opposed to requiring that all compensatory time for all Fire Fighters and Fire Officers to be used within a reasonable period of time. This should allay the District's unproven concerns, while ensuring that unit members are entitled to the same option as Fire Officers regarding the use of compensatory time in lieu of cash in cases of overtime.

The Association submits it has offered sufficient evidence to overcome the burden to award its proposal to alter the status quo and grant employees the option of taking compensatory time in lieu of paid compensation.

### **Memorializing the current 42-hour work week**

Article 4 sets forth alternate work schedules, providing for a regular schedule of 40, 42, or 44 hours, depending upon the assigned shift during each 28-day period. Presently, and for over a year, all Firefighters have been assigned to work a regular schedule of 168 hours, or an overage of 42 hours weekly, during each 28-day period. The Association requests that the scheduling language in the contract comport with the current practice of the parties. This represents the reality of the schedule worked, and the District is not harmed by memorializing that existing work schedule.

The Association submits it has offered sufficient evidence to overcome the burden to award its proposal to amend the Work Schedule Article to memorialize the current 42-hour work week.

### **Procedure for handling vacation requests other than the initial requests in November**

Currently, Article 8, Section B provides an explicit procedure for selection and granting an employee's first one or two weeks of vacation in November of each year, providing as follows:

B. Vacation lists shall be circulated prior to November 1 for the next year's vacations. There shall be one list for each division (Fire Suppression Division and Fire Prevention Division). One division's ability to grant Leave Time shall have no effect on the other division's ability to grant Leave Time. The vacation schedules shall be prepared by order of seniority until all employees have chosen their first one or two weeks of vacation, however, an employee shall forfeit his/her turn to select and pass a vacation schedule on to the next employee if she/she fails to select within 72 hours. Final initial vacation schedules shall be posted when employee's responses are received. Once all initial vacations are selected the schedule shall be returned to those employees entitled to additional vacation to pick their remaining vacation in order of seniority. Vacation changes shall be permitted with at least one-week notification but in no case shall seniority be used to displace an existing predetermined vacation. It is the intent of this policy that vacations be used wherever possible in lengths of at least a week with individual days reserved for those occasions when up to or less than a week of unearned vacation remains. The Department Head shall have the authority to adjust

such schedules so as to maintain an effective working force at all times. All vacation shall be taken in full days only, except if remaining credit is less than a full day. The vacation year is coincident with the calendar year.

However, they submit the Section is silent as to the explicit manner in which vacation leave is to be approved by management after the initial requests in November.

To respond to this omission, the IAFF has proposed the following procedure as an additional Section to be added to Article 8:

Time Off Approval: All scheduled time submitted for approval, greater than 2 weeks from the date requested shall be approved or denied by management within 96 hours. All time not acted on after 96 hours will be considered approved. All scheduled time submitted for approval less than 2 weeks from the date requested shall be approved within 48 hours. All time not acted on within 48 hours will be considered approved. All scheduled time submitted less than 48 hours before the day shall be handled by dealing with direct supervisor.

The IAFF submits that this represents a balanced procedure, enumerating parameters for disposition of vacation requests based upon an explicit schedule. This is essential, since the practice in the Department has often been that vacation requests are not approved until the last minute, preventing employees from making future plans with any type of certainty. This has been exacerbated by the decline in staff, coupled with the significant increase in calls for service.

The IAFF submits that there is nothing in its proposal that restricts management's right to disapprove a vacation request if there are any issues regarding available staffing. Rather, it is intended to require timely responses to any vacation request, so that all interested parties may make appropriate plans and schedules going forward.

The Association submits it has offered sufficient evidence to overcome the burden to award its proposal to amend the Vacation Article to provide a procedure for handling vacation requests other than the initial annual request in November.

#### **Increase in acting out-of-title pay**

Currently, Article 24 of the Agreement provides for the payment of acting out-of-title pay at the rate of \$35 per shift, based upon the following provision:

A. Any employee i.e., Fire Fighter/EMT, or Fire Fighter/ Inspector, working in the capacity as a supervisor as ordered by a superior, shall be paid at the rate of \$35 per shift after serving for three hours during the shift. This policy shall be offered to 'on duty' personnel on a rotating seniority basis.

The IAFF submits that the current rate of \$35 has remained unchanged for 15 years. It was originally based upon the difference between Step 24 of the Fire Fighter/Inspector Salary Guide and the top Lieutenant rate, divided by annual hours worked (2,184), times the hours of the shift. This rate has remained unchanged for 15 years, during the time when there has been

a significant increase in the salaries of both the Lieutenant and Fire Fighter/Inspector. The IAFF is only seeking to update the rate to correspond to the current salaries.

Accordingly, the difference between the current top Lieutenant rate of \$132,138.84 and Step 24 of the Firefighter/Inspector rate of \$120,489.08, divided by 2,184 hours worked during the year, equals \$5.33, times the 12-hour shift, equals \$63.96. In the interest of simplicity, the IAFF is proposing the rate of \$60 per shift.

The Association submits it has offered sufficient evidence to overcome the burden to award its proposal to alter the status quo, and increase from \$35 to \$60 per shift, the amount paid for acting out-of-title.

## **DISCUSSION AND ANALYSIS**

### **A. The Arbitrator's Authority**

Public employers and public safety Associations are statutorily mandated to resolve their labor disputes pursuant to the Police and Fire Interest Arbitration Reform Act, N.J.S.A. 34:13A-16 (the "Act"). By enacting the Act, the Legislature recognized the unique and essential duties police officers and firefighters perform and the life-threatening dangers they face. The purpose of the interest arbitration procedure is to promote and protect the well-being of New Jersey citizens, the efficient operation of police and fire departments as well as the high morale of employees that perform this important work.

### **B. Statutory Criteria**

In rendering an award, the Arbitrator must consider the following nine (9) factors:

1. The interest and welfare of the public;
2. Comparison of wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with 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;
  - b. In public employment in general;
  - 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)

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. The stipulation of the parties;
5. The lawful authority of the employer;
6. The financial impact on the governing unit, its residents and taxpayers;
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 negotiations and collective bargaining between the parties in the public service and in private employment;
9. Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c.62 (C. 40A:4-45.45).

The Arbitrator must render an award based on the evidence on the record considering the statutory criteria set forth above. The opinion and award must clearly address the criteria. It must include a discussion of the evidence as it relates to the statutory criteria, the weight accorded to each criterion and the reason for the decision. The opinion and award must also explain whether any of the criteria were deemed to be irrelevant and why.

This Award will be issued under concept of “conventional authority” pursuant to N.J.S.A. 34:13A-16d; and, N.J.A.C. 19:16-5.7(e). Under conventional authority, an arbitrator’s award is not limited by either party’s final offer. Rather, the arbitrator has the power to select from either party’s last offer or, alternatively, the arbitrator may use his or her judgment and grant an award that he or she feels is more reasonable than any offers made by the parties. *See, e.g., Hudson County Prosecutor and IAFF Local 232*, Docket No. IA-96-178 (July 28, 1997) (Arbitrator did not err by establishing third year salary for Fire District prosecutor investigators which was lower than the employer’s offer).

N.J.S.A. 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of

justifying the proposed change. The burden must be met by sufficient evidentiary support. No proposed issue can be deemed presumptively valid in the absence of justification that is supported by credible evidence. Indeed, labor stability is partly conditioned upon the parties consistency in the application and implementation of terms and conditions of employment as set forth in the parties' agreement. For this reason, changes the in terms and condition of employment should not be awarded lightly. Moreover, any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. A decision on an individual issue will include consider the reasonableness of awarding that issue in relation to the overall terms of the award. Indeed, while there may be merit to awarding or denying a single issue if it were to stand alone; a different conclusion is reached when considered within the context of the entire award. I am also required by statute to determine the total net annual economic cost of the terms required by the award.

The parties have submitted extensive documentation and comprehensive position statements addressing the statutory criteria which I have reviewed and considered under the 16g criteria. The issues in dispute are both economic and non-economic. Each issue in dispute will be addressed below and will include an analysis of the issue and an award resolving that issue.

### **The 16g Criteria**

#### **The Interest and Welfare of the Public, N.J.S.A. 34:13A-16g(1)**

The Interest and Welfare of the Public criteria is the most significant of all statutory factors to be considered and an Arbitrator must give due weight to the interest and welfare of the public when issuing an award. It is a criterion that includes the financial impact of the awarded increases and the desirability of maintaining employee morale for the Fire District's firefighters. Indeed, the criteria recognizes the interest of the public in knowing that its fire department is staffed by competent, dedicated personnel possessing good working morale, and the interest of the public in avoiding higher taxes and/or diminished services.

As Arbitrator Mastriani recognized in Point Pleasant and IAFF Local 106, IA-2012-001 (September 19, 2011): "The interest and welfare of the public is entitled to the most weight because it is a criterion that embraces many other factors and recognizes their interrelationships, including the financial impact of an award on the governing body and taxpayers." *See also Fire District of Seaside Park and IAFF Local 182*, IA-2012-022 (April 9, 2012) ("The interest and welfare of the public is not only a factor to be considered, it is the factor to which the most weight must be given."). "Arbitrators have reviewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale." *See Sayreville and IAFF Local 98*, IA 2006-047 (November 5, 2008).

The New Jersey Supreme Court emphasized that “the public is a silent party” to the interest arbitration process, and that “an award runs the risk of being found deficient if it does not expressly consider” the public interest. Hillsdale, 137 N.J. at 82-83. “Indeed, the Arbitration Act expressly requires the arbitrator to consider the public interest and public welfare.” Id. “An award that ignores the interests and welfare of the public or subordinates these interests to other considerations would tend to undermine the intent and purpose of the Act itself.” Fire District of West Windsor, Docket No. IA-2019-014, June 20, 2019. In the Appellate Division’s decision in the Hillsdale matter, the Court found that the public interest factor “focuses in part on the priority to be given to the wages and monetary benefits of public employees within a municipality’s budget and plans.” Hillsdale, 263 N.J. Super. at 188. “It is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award. That would also conflict with other enumerated factors and render them hollow.” Id. Arbitrators historically understood this criterion as requiring that public safety employees be well compensated. However, the Appellate Division directed that this criterion be interpreted differently, holding that it “focuses in part on the priority to be given to wages and monetary benefits of public employees within a public employer’s budget and plans.” Hillsdale, 263 N.J. Super. At 188. In other words, an interest arbitrator is required to balance the expense borne by the taxpaying public with the need to ensure that the necessary services are provided.

### **Comparability 16g (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 C.34:13A-16.; provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

### Internal Comparisons

Internal comparability can be broken down into two general categories consisting of uniformed and non-uniformed employees within the same jurisdiction. An internal pattern of settlement in the same jurisdiction involving both uniform and non-uniform employees is a significant factor in the determination of an award because it usually corresponds to a public employer's budgetary capabilities and connotes uniform treatment. In this proceeding, the internal comparisons presented by the parties included the Collective Negotiations Agreement between the Fire District and Fire Officers FMBA Local 115 (FMBA), the Collective Negotiations Agreement between Evesham Township and FOP Lodge 143 ("Police/FOP") and the Business Manager's Employment Agreement.

### External Comparisons

External comparability consists of comparisons between the group subject to the petition and other public safety employees in similar jurisdictions, other public employees, generally, and private sector comparisons. In weighing salary statistics introduced by a party, PERC has promulgated guidelines that may be broken down into the following five general categories:

1. Geographic comparability, contiguous jurisdiction or nearby, size of jurisdiction, and nature of employing entity;
2. Socioeconomic considerations, basically a comparison of the type of statistics found in the New Jersey Municipal Data Book and the UCR, such as population density, cost of living, crime rate, violent crime rate, fire incident and crime rate, etc.;
3. Financial considerations, such as the tax collection rate, state aid, budget surplus, surplus history, ratios of tax revenue to total revenue, etc.;
4. Compensation/benefits provided to employees of the comparison group; and
5. Any other comparability considerations deemed relevant by the arbitrator.

### Salary comparisons

Since 2011, comparability of percentage increases for interest arbitration has been considered but has been less relevant due to the 2% salary cap. Now that the 2% salary cap has sunset, comparability will once again be a significant criterion to address.



According to the 2018 Biennial Report on the Police and Fire Interest Arbitration Reform Act issued by PERC, the number of interest arbitration petitions decreased since the implementation of the 2% hard cap. After enactment of the law, there were twenty (20) petitions in 2015, nine (9) in 2016, and twenty-nine (29) in 2017. The number of interest arbitration awards issued over the last two years remained low (8 in 2016; 4 in 2017; 2 in 2018). For the years 2008 through 2017, the average annual salary increases in interest arbitration awards were: 2008-3.73%; 2009-3.75%; 2010-2.88%; 2011-2.05%; 2012-1.98%; 2013-1.89%; 2014-1.69%; 2015-1.71%; 2016-1.94%; 2017-2.05%.

The Fire District submitted comparisons from Bordentown Township, Cherry Hill Township, Florence Fire District, Glassboro Borough, Jackson Township, Medford Township, Mt. Laurel Fire District, Mt. Laurel Township EMT, Voorhees Township, Westampton Township, Winslow Township Fire District, and Willingboro Township.

The IAFF submitted the following collective negotiations agreements as external comparables for consideration: Voorhees Township, Mt. Laurel, and Cherry Hill.

#### Private Sector Wage Data

Although an arbitrator must consider the general level of wage increases in the private sector, an arbitrator is not required to accord such statistics any weight. Indeed, unless a party presents credible evidence comparing a private sector classification to a public sector classification, the private sector comparison will be considered but not given much weight. I do not afford much weight to the private sector comparison but note the parties arguments.

On July 2, 2019, PERC published its most recent report of private sector wage changes based on data compiled by the New Jersey Department of Labor and Workforce Development. For the fiscal year period July 1, 2017 through June 30, 2018, according to PERC's reporting, private sector wages increased 2.5%; government wages increased 2.9%; and total average annual wages increased 2.6%.

#### **Overall Terms and Conditions of Employment 16g(3)**

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.

The evidence considered by the Arbitrator encompasses the *status quo* terms and conditions of employment and note that that this unit receives the following: work hours of 6 a.m. to 6 p.m./Monday to Friday, overtime, shift differential, vacation, payment for unused vacation/sick leave upon retirement, holidays, personal leave, sick leave, pension, bereavement leave, health insurance, salaries, step increments, longevity, tuition aid, and out of title pay.

### **The Stipulation of the Parties, N.J.S.A. 34:13A-16g(4)**

The Parties stipulated to their agreement to the following at the hearing: (1) Art. 9 para. C, pg. 9: Sick leave upon retirement to mirror existing law to read “Payment shall not exceed five hundred and twenty eight (528) hours, except employees hired after the effective date of P.L. 2010, c. 3 will be subject to those limits set forth.” (2) The “Deputy Chief” language will be changed to “Department Head.” (3) The following language in Article 25:

#### **“Article 25, Dues Deduction**

- A. The District agrees to grant rights of dues deduction to the Association and will deduct Association membership dues from the pay of those Employees who individually and voluntarily request in writing that such deductions be made, in the amount as determined by the Association. For each employee who signs such an authorization card, the check-off shall commence in the pay period following the filing of the authorization card with the District. The District shall remit to the Association once a month, the monies collected for this purpose.
- B. Employees who have authorized the payroll deduction of fees to the Association may revoke such authorization by providing written notice to the District, as prescribed by N.J.S.A. 52:14-15.9e, during the ten days following each anniversary date of their new employment. Within five days of receipt of notice from an employee of revocation of authorization for the payroll deduction of fees, the District shall provide notice to the Association of an employee’s revocation of such authorization. The effective date of a termination in deductions shall be July 1 next succeeding the date in which notice of withdrawal is filed by an employee with the District.”

### **The Lawful Authority of the Employer, N.J.S.A. 34:13A-16g(5)**

While the 2% hard cap has sunset, statutory limitations are specifically referenced in other criteria, including the lawful authority of the employer, the tax cap levy and other statutory restrictions upon the employer. N.J.S.A. 34:13A-16(g)(5) requires the arbitrator to consider the “lawful authority of the employer,” and specifically references P.L. 1976, c. 68, which is codified at N.J.S.A. 40A:4-45.1 et seq. The aforementioned statute is commonly known as the “Local Government Cap Law,” and states, “it is hereby declared to be the policy of the Legislature that the spiraling cost of local government must be controlled to protect the homeowners of the state and enable them to maintain their homesteads.” N.J.S.A. 40A:4-45.1. The New Jersey Legislature established a second tax levy cap established by section 10 of P.L. 2007, c. 62, which is now codified at N.J.S.A. 4-45.45. As part of this legislation, the Interest Arbitration Act was also

amended to include a ninth and final criteria for the arbitrator's consideration, "the statutory restrictions imposed upon the employer," which specifically includes "the limitations imposed upon the employer by section 10 of P.L. 2007, c.62." N.J.S.A. 34:13A-16(g)(9).

Section 10 of P.L. 2007, c.62 originally established a tax levy cap of four percent (4.0%) above the previous year's tax levy. However, on July 13, 2010, Governor Christie signed into law P.L. 2010, c. 44 in order to cut the allowable tax levy increase to two percent (2.0%). As explained above, the two percent (2.0%) tax levy cap "caps the amount that you raise the tax by 2 percent."

The Appellate Division in Hillsdale interpreted the "lawful authority of the employer" criterion to refer to the Local Government Cap Law. Hillsdale, 263 N.J. Super. at 193. The Supreme Court agreed, stating, "Given the existence of financial constraints and budget caps... an award to police or fire departments necessarily affects other municipal employees and the entire municipal budget." Hillsdale, 137 N.J. at 86. In Hillsdale, the Appellate Division required the arbitrator to consider the impact of the award on other budget items. Hillsdale, 263 N.J. Super. at 194. When applying the lawful authority of the employer criterion, the Arbitrator must address the Fire District's budget cap situation, as well as the statutory requirement that the Fire District prepare a balanced budget each year.

**The Financial Impact on the Governing Unit, Its Residence, The Limitations Imposed Upon the Local Unit's Property Tax Levy, and Taxpayers, N.J.S.A. 34:13A-16g(6)**

N.J.S.A. 34:13A-16g (6) also requires the Arbitrator to consider the financial impact of the parties' offers on the governing unit, its residents and taxpayers. In IAFF Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), the court noted that the financial impact requirement in the statute does not equate with the municipalities' ability to pay. Id. at 188. The Supreme Court stated in Hillsdale that a municipality should not have to prove that it is not financially able to afford the IAFF's final offer. 137 N.J. at 86. This criterion encompasses a far more searching and critical analysis than simply whether a local government has the ability to pay an award. It does not require the local government to prove that it would suffer financial difficulties as a result of an award. Id. Put differently, a local government "should not have to demonstrate it would be financially crippled before its arguments could be found to be sufficient." Id. at 194. Arbitrators have recognized this fact as well. Arbitrator Barbara Tener analyzed this issue in In the Matter of Interest Arbitration between Borough of Oakland and Oakland IAFF Local 164, IA-93-069 (1994) noting that "[T]he affordability of the respective packages is not, in my view, a very weighty factor unless the more reasonable package is also the more expensive. The question of whether the Borough can afford the IAFF's offer is not dispositive in this case."

The New Jersey Supreme Court emphasized that "it is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of the public interest arbitration award." Id. (quoting Hillsdale, 263 N.J. Super. at 188). Moreover, the municipality does not carry the burden of proving its financial inability to meet the Association's final offer. Id. In addition,

the correct application of this criteria does not require an employer to provide that it would suffer a “substantially detrimental result,” or that the financial difficulties would be created or worsened. Hillsdale, 263 N.J. Super. at 194. Rather, the effect that the award will have on other employees and the employer’s overall budget must be considered by the Arbitrator. Hillsdale, 137 N.J. at 86.

### **Cost-of-Living Criterion, N.J.S.A.34:13A-16g(7)**

The Consumer Price Index “CPI” is a measure of the average change, over time, in the prices paid by consumers for a market basket of consumer goods and services. Goods and services measured by the CPI include food and beverages, housing, apparel, transportation, recreation, education and communication, and all other goods and services. The CPI is the most widely used measure of inflation. The CPI for all urban consumers in the United States increased by 0.3 percent in April 2019’s CPI data. The CPI increased by 1.7 percent over the past year according to CPI data. The CPI for the New York-Northern New Jersey area has reported increases. For half of 2019 the CPI on average advanced 1.7 percent.

An annual Cost-of-Living Adjustment (COLA) is authorized under the Budget Cap Law, N.J.S.A. 40A:4-45.1.a. Under the Budget Cap Law, the Department of Local Government Services (“DLGS”) announces the COLA. The DCA announced COLA for calendar year 2019 budgets is 2.5%. In addition, the CPI is often used to adjust consumer’s income payments, for example, Social Security, to adjust income eligibility levels for government assistance and to automatically provide cost of living wage adjustments to millions of American workers. The COLA for Social Security benefits in 2019 is 2.8%.

### **Continuity and Stability of Employment, N.J.S.A. 34:13A-16g(8)**

N.J.S.A. 34:13A-16g(8) provides for consideration of:

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 bargaining between the parties in the public service and in private employment.

The continuity and stability of employment criteria incorporates several concepts. The first providing a competitive compensation and benefits package that alleviates excessive turnover thus maintaining "continuity and stability in employment." The second is the concept of the "relative standing" of a negotiations unit with respect to other units of similar employees. Last, the

continuity and stability of employment criteria incorporates the consideration of internal settlements and comparability, since deviation from such settlements can undermine morale, discourage future settlements, and affect labor relations stability.

The “stability and continuity of employment” criteria relates to employment issues such as layoffs, give backs, and salary freezes. Hillsdale, 263 N.J. Super. at 195. Specifically, the Appellate Division stated that arbitrators are required to consider facts such as salary structure, unemployment rates, employee turnover and the “virtual absence of unemployment among police.” Fox, 266 N.J. Super at 519.

#### **Other Restrictions Imposed on the Employer, N.J.S.A. 34:13A-16g(9)**

The Legislature has codified the “cap consideration” requirements and statutory limitations on the employer set forth in section 10 of P.L. 2007, c.62 (C. 40A:4-45.45) in section 16g(9).

## **ANALYSIS AND AWARD**

After review of the Final Offers, evidence and arguments, the Interest Arbitration Award in this proceeding is analyzed and discussed below.

The interest and welfare of the public has been given the most weight in this Award with significant weight given to the existing salary and benefits of IAFF members in relation to the Fire District's proposed changes. The comparison of firefighters' salary and benefits to the Fire District Fire Officers and comparable firefighters in the geographic area was also given significant weight. In that regard, the continuity and stability of employment/relative ranking of the Fire District has also been given significant weight in this award. Great weight has also been applied to the lawful authority of the employer and financial impact criteria. I have given lesser weight to the CPI, COLA, private sector wage increases and PERC settlement statistics.

### **Article 43. Terms and Renewal**

The Fire District and IAFF each are proposing a five (5) year contract term.

Accordingly, I Award a five (5) year duration from January 1, 2019 through December 31, 2023.

### **Article 18-Salaries**

The Fire District's Final Offer has proposed the following:

A new Salary Guide for all Firefighter/EMT's for the duration of the agreement. Note: New hires (after 12/31/18) "top out" at 20th step (\$100K) on the guide. Elimination of FF/Inspector Title for new hires (hired after 12/31/18). New hires (after 12/31/18) receive \$3000 stipend if perform inspection services. EMT only guide.

The IAFF's Final Offer proposed the following:

The salary guides for both Firefighter/EMT and Firefighter/Inspector shall be a static guide on Steps 1 through 9 from January 1, 2019 through December 21, 2023. All Firefighter/Inspectors and Firefighter/EMTs eligible for step movement shall do so each year of the contract. There shall be no cost of living increase for any Firefighter/Inspector or Firefighter EMT on any steps of either guide in 2019. Both salary guides shall be adjusted by 1.5% cost of living increase, effective January 1, 2020, 2021, 2022, and 2023, at Step 10 and higher.

The Fire District submits that the evidence presented shows that the Fire District's financial proposal is fair, equitable, and reasonable, and takes into consideration not only the Fire District's financial position and the interest and welfare of the public, but the fact that the taxpayers of Evesham deserve and currently pay generous wages for quality and professional fire and EMT

service; all mandating against the IAFF's demand that those at the upper levels of the salary guide achieve a salary of \$127,791 in the final year of the five-year contract.

The Fire District argues that in considering the financial impact of the award on the public entity a municipality should not have to prove that it is not financially able to afford [the Association's] final offer, and "it is not enough to simply assert that the public entity involved should merely raise taxes [like Dr. Caprio insisted] to cover the costs of a public interest arbitration award." Hillsdale, 263 N.J. Super at 188. The Fire District submits that it is well settled that the "interest and welfare of the public" factor not only includes a financial analysis, but is a broader analysis that has been uniformly held to encompass the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale. Sayreville and PBA Local 98, IA 2006-047 (November 5, 2008).

The Fire District argues that it can hardly be viewed as in the best interests of the public/taxpayers that firefighters earning \$78,670 in 2018 should receive a \$45,275 raise during the life of the Association's proposed contract. The Fire District argues this is in stark contrast to the Fire District's proposal which provides for a reasonable increase during the life of the agreement of \$17,329 for those particular members and overall, provides for increases of \$270,844.05 during the life of the agreement. The Fire District maintains the unit's members are not "losing" any monies as a result of the Fire District's proposal. They are simply being forced into a more realistic and sustainable salary structure that provides fair and reasonable compensation.

The Fire District argues that in the best interests of the taxpayers the cycle historically employed by these parties much stop. For if the cycle continues, the Fire District submits the salaries will be exponentially and virtually uncontrollably increased to a point where firefighters are earning hundreds of thousands of dollars per year.

The IAFF argues that the Fire District's wage proposal constitutes a radical and unprecedented alteration of the existing Salary Guides and is unwarranted based upon the record evidence. The IAFF argues that the Fire District's wage proposal will decimate the economic well-being of the existing bargaining unit, threaten the continuity and stability of Firefighter/EMTs and Firefighter/Investigators, create an irrational and unreasonable new Salary Guide, and unduly erode the Fire District's standing with other comparable fire districts.

The IAFF submits that the Fire District is not simply making a counter-economic proposal regarding a reduced cost-of-living percentage, with the addition of a step to an existing guide. Rather, the IAFF notes that the Fire District is proposing elimination of the existing Salary Guides for Firefighter/EMT and Firefighter/Inspectors and the longstanding 8 Step guide and four longevity increases over the remaining years of employment, and replacing that with a 25 Step Guide, substantially reducing every step of the Guide, including the top and bottom steps, and freezing the guide over the life of the contract, without offering a cost-of-living increase to any employee. The IAFF notes that the proposed change will have a destructive impact on the existing bargaining unit.

The starting salary for a FF/EMT is \$51,770 and FF/Inspector is \$56,797 with top step pay for a FF/EMT of \$108,590 and \$120,489 for a Firefighter/Inspector. The IAFF is comprised of 21 members; 3 at step 19 (\$119,095), 7 at step 14 (\$117,981(6)/\$106,332 (1 FF/EMT)); 1 at step 9 (\$116,866); 2 at step 7 (\$95,565); 4 at step 6 (\$90,645); 2 at step 5 (\$84,881) and 2 at step 3 (\$70,839 (1)/\$63,564 (1 FF/EMT)). The salary guide provides for generous step increases and longevity. The salary includes longevity, holiday pay and EMT stipend. The base salary of \$2,290,700 was used by both parties in calculation of their proposals and cost outs.

#### The Fire District's Cost Out

The Fire District's cost out of its Final Offer shows the following: 2019-total base cost of \$2,291,815 or a 5.17% increase due to step movement; 2020- base cost of \$2,319,000 or a 1.19% increase; 2021-base cost of \$2,377,500 or 2.52% increase; 2022-base cost of \$2,411,000 or a 1.41% increase and 2023-base cost of \$2,450,000 or a 1.62% increase. The Fire District's cost out of its five-year proposal averages 2.38%.

#### The Fire District's Cost Out of the IAFF Final Offer

The Fire District's cost out of the IAFF Final Offer shows the following: 2019-total base cost of \$2,291,815 or a 5.17% increase; 2020-base cost of 2,420,292 or a 5.61% increase; 2021-base cost of \$2,530,303 or a 4.55% increase; 2022- base cost of \$2,654,307.66 or a 4.90% increase; and a base cost in 2023 of \$2,715,808 or 3.67%. The Fire District's cost out of the IAFF five-year proposal averages 4.78%. The Fire District submits the cost difference in its Final Offer and the IAFF's Final Offer is \$101,292 in 2020, \$152,803 in 2021, \$243,307 in 2022 and \$301,808 in 2023.

#### The IAFF Cost Out

The IAFF cost out of its Final Offer shows the following: 2019-total base cost of \$2,282,269 or a 4.68% increase due to step movement; 2020-total base cost of \$2,374,375 or a 4.05% increase; 2021-total base cost of \$2,476,485 or a 4.29% increase; 2022-total base cost of \$2,576,567 or a 4.04% increase; 2023-total base cost of \$2,692,325 or a 4.49% increase. A significant amount of the increased cost is tied to the step increments in the existing salary guide. The Fire District's cost out of the IAFF Final Offer shows that in 2019 a majority of the step guide increases range from 3.38% to 7.89%. In 2020, the range of the step increases is 1.48% to 16.42%. In 2021, the range of the step increases is 1.48% to 12.79%. In 2022, the range of the step increases is 1.48% to 12.79% and in 2023 is 1.48% to 12.79%. The average yearly percentage increase of the IAFF Final Offer is 5.88%.

#### The IAFF Cost Out of the Fire District's Final Offer

Dr. Caprio costed out the two proposals, adjusting the Fire District's proposal to compensate for its underestimate of the unit's salaries; costed out the IAFF proposal with



breakage (recognizing the absence of Robertson and Gallagher), and estimated the cost without breakage. Dr. Caprio summarizes his findings as follows:

	2019	2020	2021	2022	2023	2020-2023
District Adjusted	\$2,290,700	\$2,361,000	\$2,419,500	\$2,453,000	\$ 2,484,000	\$9,717,500
Increment		\$ 70,300	\$ 58,500	\$ 33,500	\$ 31,000	
		3.07%	2.48%	1.38%	1.26%	
District Original	\$2,290,700	\$2,316,000	\$2,377,500	\$2,411,000	\$ 2,450,000	\$9,554,500
		\$25,300	\$61,500	\$33,500	539,000	
		1.10%	2.66%	1.41%	1.62%	
IAFF FULL COST	\$2,290,700	\$2,374,735	\$2,476,485	\$2,576,567	\$ 2,692,325	\$ 10,120,068
		\$84,035	\$101,750	\$100,082	\$115,758	
		3.67%	4.29%	4.04%	4.49%	
IAFF With BREAKAGE	\$2,211,106	\$2,303,595	\$2,410,605	\$2,513,920	\$ 2,632,751	\$9,860,871
		\$92,489	\$107,010	\$103,315	\$ 118,831	
<b>2019 Specific</b>						
Breakage	\$79,594	4.18%	4.65%	4.29%	4.73%	

### Salary Award

As the IAFF noted, conventional arbitration as required by the Act often encourages arbitrators to reject both parties' proposals and "split the baby." This proceeding, however, is more akin to "Final Offer" Interest Arbitration rather than conventional arbitration. The parties Final Offers on Salary leans to the Interest Arbitrator having to choose either the Fire District's new proposed Salary Guide and EMT Only Guide or the IAFF's proposed increases to the existing Salary Guides.

After review of the parties Final Offers, the numerous exhibits and passionate arguments and submissions on Salaries, I find the Fire District did not meet its burden to justify the Salary Guide changes or EMT Guide Only changes it proposes in its Final Offer. While the Fire District's desire to "stop the cycle" historically employed by the parties is understandable; that rationale alone does not support the Salary Guide changes or EMT Only Guide proposed by the Fire District. The Fire District has not offered sufficient financial, operational or other rationale and evidence to support an award of its proposed changes to the existing Salary Guides and that warrants a new EMT Only Guide. The IAFF, on the other hand, proposed a more reasonable Final Offer regarding Salaries and I award same based on the 16g Criteria.

The interest and welfare of the public has been given the most weight in this analysis. “Arbitrators have reviewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale.” See Sayreville and IAFF Local 98, IA 2006-047 (November 5, 2008). An analysis of this criteria must extend beyond the finances of the governing unit and include how wage increases will affect the public interest in other areas. See also Point Pleasant, P.E.R.C. Docket No. I.A. 2011-001 (Mastriani, J. 2011) at 34. The Salary Award is in the public interest as it will allow the Fire District to continue to maintain its fiscal responsibility to the taxpayers while providing the Firefighters a fair and reasonable increase to help continue its history as an effective Fire District with high morale.

The Fire District’s primary fiscal concerns are that firefighters are paid too much making \$127,791 at the top of the guide and firefighters earning \$78,670 in 2018 will receive a \$45,275 raise during the life of the Association’s proposed five-year contract. Other than arguing the historical guide is not in the interest of the taxpayers, the Fire District has not shown an economic need to restructure the guides, an inability to pay or other financial or operational reason to overcome the burden to change the *status quo*. The Fire District’s concern over the salary levels are not unwarranted; however, that concern alone does not overcome the heavy burden required to change the historic employment structure in the Fire District with its new Salary Guide structure or an EMT Only Guide.

The Fire District has a highly experienced, motivated and educated workforce operating at its lowest staffing levels in years. It is important for the Fire District to retain this workforce and enhance its membership. That unit’s members are not “losing” any monies as a result of the Fire District’s proposal and are “simply being forced into a more realistic and sustainable salary structure that provides fair and reasonable compensation” is not alone sufficient to support the Fire District’s salary proposal. Though no Firefighter will lose money by being “forced” under the Fire District’s proposed Guide and EMT Only Guide, the decreased salaries over the term of the Agreement and career of a firefighter could have a deleterious impact on the existing bargaining unit and its morale. The Fire District’s proposed Guide with its reduced starting salary is contrary to its more stringent hiring standards and high expectations and is not as certified in its SAFER Grant application which could arguably make it more difficult to recruit and hire the new firefighters it seeks.

The Award of a static guide in Steps 1 through 9, with no cost-of-living increases for five years of the contract; no cost-of-living increases for any employee in 2019; and a 1.5% increase on Steps 10 and above from 2020 through 2023 is more reasonable and in accord with the interest and welfare of the public. This wage increase for the Firefighters from Steps 10 and above, which is approximately half of the bargaining unit, amounts to 1.2% annually over the life of the contract. While the existing Salary Guides have generous step increments and may be atypical vis-à-vis longevity, the Award of a static Guide with no cost of living or other increase recognizes this in the existing Guide. The wage increase of 1.5% to the other steps of the Guide is less than any increase during the past 20 years. The Award is also warranted when considering the increased demands that have been placed upon the current employees and the need to hire additional firefighters. The Fire District’s suggestion that its hiring initiative may be

impacted by the Award is not supported by the record as the SAFER Grant application and Grant Award was based upon the salaries and step increases under the existing Salary Guides.

The Fire District's historic employment structure includes maintaining the Firefighter/Inspector Guide and the Fire District has not overcome its burden to justify why that should change. The Fire District already has a FF/EMT Guide. The Fire District still requires Firefighters obtain the inspection certification within the first year of employment. The Fire District advances the Firefighter/Inspector publicly and recognizes the Inspector position as a promotion by requiring the Board to vote to advance a Firefighter/EMT to the Firefighter/Inspector level. The Fire District provides a premium for this promotion and also earns revenue from the fees generated by their inspection work. The fact that the Fire District has promoted a number of Firefighter/Inspectors for which it pays a premium and only a few perform the work does not alone justify the Fire District's proposed new Salary Guide and EMT Only Guide.

The Fire District has also failed to offer sufficient evidence to overcome its heavy burden to award its proposal to alter the *status quo* and create an EMT Only Guide. While the Fire District's desire to implement an EMT only 24/7/365 initiative may be laudable, that alone does not support the burden to alter the *status quo*. The record was devoid of evidence indicating that the current staffing pattern is unable to continue to adequately serve the Fire District, no longer cost effective, and/or requires the immediate creation of an EMT-only, full-time career position that cannot be handled through the hiring of additional Firefighter/EMT positions, or by the existing workforce. Also, as noted by the IAFF, the hiring of EMT-only positions may result in disruption of existing staffing relations, create internal dissension within the bargaining unit by requiring existing employees to work side-by-side with employees who perform no fire suppression work and have different interests and concerns, and for whose other terms and conditions of employment have not been proposed or negotiated. Creation of this stand-alone position undermines the morale and stability of the existing workforce.

The Fire District's proposed Guide changes are also not supported by its own internal pattern of settlement. The Fire District's settlement with the FMBA averaged 1.77% for Lieutenants and Captains for 2019. The FMBA increases for 2020 and 2021 are linked to a continuation of the Firefighter/Inspector salary scale awarded here further supporting its continuation as awarded. The Fire District also provided an increase to the Business Manager in 2019 and 2020 greater than that Awarded here. The Award of 0% other than step movement in 2019 is below that settled internally, and a static albeit generous guide with no cost of living and 1.5% increase to Steps 10 and above, while lower in percent, is consistent with the wage increases granted to existing represented and non-represented employees in the Fire District.

In reviewing the Final Offers on Salary, the arguments and the numerous exhibits admitted into evidence, like other interest arbitration proceedings, the parties can find "comparable" data from "comparable jurisdictions" that support their Final Offers. The analysis includes the numbers they seek comparing salaries at different Fire Districts, salary guides, work schedules, longevity, fringe benefits, and other terms of employment. The percentage and number comparisons of various salaries alone are problematic when the only item cited is "salary." What makes up

“salary” and salary guides significantly vary. Here, for example, the IAFF’s salary includes longevity, holiday pay and an EMT stipend. Also, collective negotiations by definition involve a “give and take” with the goal of structuring an overall package that includes health benefits, sick leave, vacation leave, longevity, work schedules, tuition reimbursement, retiree health benefits, among other items. The comparable data must be examined in this context. Indeed, a good compromise is resolved by the parties themselves and when both parties are slightly disappointed.

The Award is appropriate when judged against the jurisdictions which the Fire District contends are comparable. The Award of no increase in 2019, a static guide with no increase and 1.5% increase for Step 10 and above for the remaining four years is less than the 2% per year increases in Cherry Hill, Mount Laurel, and Voorhees. The Award is also in line with the cost of living.

I have also given due weight to the overall compensation and benefits presently received and find the Award will maintain the Fire District’s standing and rank amongst other Fire Districts. The Fire District Final Offer, on the other hand, would impair the continuity and stability of the existing workforce, and erode the Fire District's ranking with surrounding jurisdictions. The Fire District's proposed Step Guide and EMT Only Guide is unlike other comparable jurisdictions and will hurt the Department’s standing with other comparable Fire Districts/Departments like Mt. Laurel and Cherry Hill, thereby threatening the continuity and stability of the Fire District's Firefighter/EMTs and Firefighter/Inspectors. *See e.g., Borough of Point Pleasant Beach and PBA Local 106*, IA-2012-001 (Mastriani, September 16, 2011 at p. 38) ("the Borough's proposal, if awarded, could unduly erode its relative standing with other comparable law enforcement units, thereby having the potential to threaten the continuity and stability of the Borough's police officers."). The Award herein is less than those settlements yet will maintain the Department’s relative standing with other comparable Fire District’s.

The cost of the Salary Award is as follows: 2019-total base cost of \$2,291,815 or a 5.17% increase for step increments that have already been paid; 2020-total base cost of \$2,374,375 or a 4.05% increase; 2021-total base cost of \$2,476,485 or a 4.29% increase; 2022-total base cost of \$2,576,567 or a 4.04% increase; 2023-total base cost of \$2,692,325 or a 4.49% increase.

The cost of the Salary Award will not cause the Fire District to exceed its limitations as to budgetary appropriations nor cause the imposition of tax revenues that exceed limitations in the tax levy cap. The Fire District did not suggest that the IAFF Final Offer would cause it to exceed its limitations as to budgetary appropriations nor cause the imposition of tax revenues that exceed limitations in the tax levy cap. The difference between the Fire District and IAFF proposals is approximately \$208,625 over the life of the Agreement. The Fire District has flexibility under the tax levy cap in the amount of \$540,395 in addition to the 2% current increase of \$160,391, new value of \$48,886 in 2019, \$903,723 in tax levy bank available for the 2020 budget. and excess budgeted resources from 2019. The Fire District has historically maintained its tax rate by use of its tax levy cap and Fund Balance. The Fire District's budget, Fund Balance, annual increase in assessed valuation, available tax cap levy, and excess budgeted resources, does not

demonstrate any statutory restriction upon the Fire District's ability to fund the wage proposal awarded herein.

Based on the application of the statutory criteria to the evidence, I Award the following salary increases:

The salary guides for both Firefighter/EMT and Firefighter/Inspector shall be a static guide on Steps 1 through 9 from January 1, 2019 through December 31, 2023. All Firefighter/Inspectors and Firefighter/EMTs eligible for step movement shall do so each year of the contract. There shall be no cost of living increase for any Firefighter/Inspector or Firefighter EMT on any steps of either guide in 2019. Both salary guides shall be adjusted by 1.5% cost of living increase, effective January 1, 2020, 2021, 2022, and 2023, at Step 10 and higher.

### **The Fire District's Other Proposals**

#### **Art. 5, para. F, pg. 6: Eliminate Shift Differential**

The Agreement presently provides:

“F. Shift differential of seven percent (7%) will be paid if a regular shift is created outside of the 05:00 to 18:00 work period, Monday through Friday.”

The Fire District argues for the elimination of shift differential noting that the existing agreement provides for “regularly scheduled” shifts of between 5 AM and 6PM. Thus, there are in fact no “shifts” allowed under the agreement “outside” of the regular shifts. For this reason, and for the reasons relating to the desire to engage full time, “around the clock” EMT’s with regular shifts covering 24 hours, a 7% shift differential is not only unnecessary, but is cost prohibitive.

The IAFF opposes the elimination of shift differential noting that the Fire Officers contract has shift differential and shift differential has been in the contract with the District for 25 years.

Under the Agreement, the District remains in complete control of shift differential, since no payment is made unless and until the District and the Association agree to a shift outside of the 05:00 to 18:00 Monday through Friday existing work schedule.

After review of the parties Final Offers and submissions, I find there is insufficient evidence to overcome the burden to award the Fire District’s proposal and alter the *status quo* since shift differential is within the Fire District’s control and is still in the FMBA contract.

#### **Art. 9, Para. C: employees terminated as a result of disciplinary action are not entitled to payment for any accumulated sick leave**

The Agreement presently provides:

“Employees terminating employment as a result of disciplinary action shall not be entitled to compensation associated with sick leave accumulated in the current calendar year, however, said employees would be entitled to compensation associated with sick leave (not to exceed 528 hours of pay) accumulated prior to January of the year of termination.”

The Fire District has proposed a modification of this provision to provide that employees discharged for cause are not entitled to payment of any accrued leave time except as mandated by law. In response to the Association’s concerns that employees who voluntarily choose to terminate their employment are entitled to accrued leave time, the Fire District amended its offer to provide that those who are discharged for cause or voluntarily terminate their employment prior to retirement are not entitled to accumulate leave payment(s) unless required by law.

The IAFF submits that the Fire District has offered no evidence justifying its effort to excise this benefit from the parties' contract. The earned sick leave provision remains in the FMBA contract.

After review of the parties Final Offers and submissions, I find there is insufficient evidence to overcome the burden to award the Fire District’s proposal and alter the *status quo* since the earned sick leave provision remains in the FMBA contract.

#### **Sick and Vacation upon Retirement: pro-rated in year of retirement**

The Fire District argues that sick and vacation leave time should be pro-rated in the year of retirement. In response to the Association’s concerns that employees who voluntarily choose to terminate their employment are entitled to accrued leave time (while retirees may not be so entitled), the District amended its offer to provide that those who retire or who voluntarily terminate their employment are entitled to a pro-rated amount of leave “payout” upon separation (i.e., if retire on April 1st, only entitled to one-quarter of leave time already credited).

The IAFF argues the Fire District has offered no evidence justifying its effort to excise this benefit from the parties' contract.

After review of the parties Final Offers and submissions, I find there is insufficient evidence to overcome the burden to award the Fire District’s proposal and alter the *status quo*.

#### **Catastrophic illness policy**

Article 20, Section E enumerates a broad sick leave donation program, allowing for the transfer of unused sick leave to another employee in the Department, subject to the approval of the Board, explaining as follows:

E. Uniformed Career Employees, with approval of the Board, may transfer unused sick leave to another employee within the department. The Board shall not unreasonably withhold such approval.

The Fire District argues for the award of the Catastrophic Illness Policy. The Fire District has proposed a catastrophic illness process identical to that negotiated with the Fire Officers Association.

The IAFF opposes the award of the policy. As testified by Fire Fighter Brinker, this program has been utilized by the parties in the past without incident, problem, or difficulty, most recently covering Fire Fighter Robertson, who retired in the summer of 2019 on disability. It is a flexible program, not conditioned upon a life-threatening illness, but allowing donation of sick time to any employee in need.

After review of the parties Final Offers and submissions, and even though the FMBA may have agreed, I find there is insufficient evidence to overcome the burden to award the Fire District's proposal and alter the *status quo*.

**Delete Drug and Alcohol policy in favor of district-wide policy**

The Agreement at Article 41 presently provides for a Drug and Alcohol Policy.

The Fire District argues for the award of the District wide Drug and Alcohol Policy. The Fire District has proposed that the Policy in the Agreement be eliminated in favor of a consistent, district-wide policy.

In response, the Association is prepared to substitute the revised drug testing levels as set forth in Article 35, Paragraph E, Section 6 of the Drug and Alcohol Policy in the FMBA contract, with the current testing levels in Article 41, Paragraph E, Section 6 of the Drug and Alcohol Policy in the Association's existing contract.

After review of the parties Final Offers and submissions, I find there is insufficient evidence to overcome the burden to award the Fire District's proposal but will award the substitution of the revised drug testing levels as set forth in Article 35, Paragraph E, Section 6 of the Drug and Alcohol Policy in the FMBA contract, with the current testing levels in Article 41, Paragraph E, Section 6 of the Drug and Alcohol Policy in the existing Agreement.

**Article 37, p. 24: Fire Investigator clause: eliminate paragraph D**

The Agreement presently provides for a minimum number of four (4) Fire Duty Marshals. The Fire District argues for elimination of this paragraph as it is a managerial prerogative.

The IAFF opposes the award of the policy. Section D does not interfere with the District's managerial prerogative and the District has failed to offer any justification for excising the Section from the parties' contract.

After review of the parties Final Offers and submissions, I find there is insufficient evidence to overcome the burden to award the Fire District's proposal and alter the *status quo*. as Section D does not interfere with the District's managerial prerogative.

## **Article 21, Training and Education**

The Agreement presently provides for tuition aid.

The District has proposed that (1) reimbursement to employees is limited to one degree only (i.e., one Bachelors, Masters, etc.), to which the Association agreed; and (2) that reimbursement percentages be determined by the grade attained in the respective course. This latter proposal is consistent with the FMBA agreement and serves as an incentive for unit members to “do their best” in their coursework.

The IAFF has no objection to limiting the reimbursement to a single degree per level (e.g., one degree for Associate, Bachelor, and Masters), and rather than advancing the money, only reimbursing the employee upon completion of the course. The IAFF objects to the District linking the amount of reimbursement based upon a formula related to the grade received, with 100% reimbursement for an A; 90% for a B; and 80% for a C.

After review of the parties Final Offers and submissions, I find there is insufficient evidence to overcome the burden to award the Fire District’s proposal but will limit the reimbursement to employees to one degree to be paid upon completion and that tuition reimbursement be limited to those classes where the employee receives a grade of "C" or higher.

### **Art. 15, p.12: Delete opt-out language**

The Agreement presently provides as follows:

“C. Option out of Healthcare Benefits: For those wishing to option out of healthcare benefits, compensation equal to the lesser of 25% of premium cost, or \$5,000, shall be Paid to employee by lump sum payment in December of the year coverage is waived. Waiver must be done in accordance with Board’s Waiver Agreement.”

The Fire District seeks to remove this language as it is statutorily non-negotiable under existing law. The IAFF Opt-out has been in the parties' contract for many years; remains in the FMBA contract; remains in the Assistant Business Administrator, Business Administrator, and Police Chiefs contracts, and in the Township's contract with the Police.

Admittedly, N.J.S.A. 40A:10-17.1 provides that the decision of the Employer to allow waiver of coverage and the amount paid "shall not be subject to the collective bargaining process."

After review of the parties Final Offers and submissions, I find there is insufficient evidence to overcome the burden to award the Fire District’s proposal and alter the *status quo* since has been and remains in all the other contracts.



## **IAFF Other Proposals**

### **Residential stipend**

The Association has proposed a 1% stipend for any Fire Fighter residing in Evesham Township, providing as follows:

Each Officer that resides within the Township of Evesham shall be entitled to residential stipend payments of one percent of their annual salary each year. Such payment shall be made the first pay period in December.

They submit this proposal is consistent with 1% residential stipend in the current FMBA contract and available to all Fire Officers, allows the Fire District to create a financial incentive to encourage bargaining unit members to reside in the Township and economically support the District, and increases response time in cases of emergencies and other times of need.

The District argues there has been no showing that implementing a costly (and unnecessary) residential stipend will have any impact either on attracting candidates or retaining existing members.

After review of the parties Final Offers and submissions, I find there is insufficient evidence to overcome the burden to award the Association's proposal and alter the *status quo* since the members present compensation is sufficient to attract and retain members.

### **Article 4 Schedule-Revise contractual work schedule language to correspond to the current schedule worked by bargaining unit members**

The Agreement presently provides as follows:

"It is the intent of this section that the regular schedule be 160-176 hours, depending on the assigned 40,42 or 44 hours, during each twenty-eight (28) day period."

The Association requests that the scheduling language in the contract comport with the current practice of the parties.

The Fire District argues the schedule as presently envisioned in the Agreement is appropriate and acceptable. The Association has not shown why the "status quo" should be upset, particularly to do so would negatively affect the allowance for flexibility in the scheduling of personnel by management.

After review of the parties Final Offers and submissions, I find there is insufficient evidence to overcome the burden to award the Association's proposal and alter the *status quo*.

**Article 5 Overtime. Revise Overtime Article to provide that in the event an employee works in excess of is normal hours of duty, he/she should be entitled to be paid either compensation or compensatory time at the rate of 1.5 times the hourly rate**

The Agreement presently provides as follows:

“In the event that an employee works in excess of his/her normal work hours of duty, he/she will be entitled to paid compensation at the rate of one and one half (1.5) times the hourly rate.”

The Association has proposed that Article 5 of the existing contract, entitled Overtime/Shift Differential, be modified to provide either payment for overtime as it currently exists, or for the use of compensatory time at 1.5 times the existing rate, and note that the Fire Officers have compensatory time.

The District has rejected this proposal since it will, among other things, result in the District’s “paying out” compensatory time at the unit member’s higher rate at a subsequent time as opposed to paying the unit member overtime at the time he/she works. In addition, awarding compensatory time in lieu of overtime will contribute to the ongoing shortage of staff.

After review of the parties Final Offers and submissions, I find there is insufficient evidence to overcome the burden to award the IAFF’s proposal and alter the *status quo* in light of staffing and even though the FMBA has compensatory time.

**Article 8, Vacation. Amend Vacation language Article to establish a time period for management to approve or disapprove vacation leave**

The Agreement presently provides as follows:

“Vacation lists shall be circulated prior to November 1 for the next year’s vacations. There shall be one list for each division (Fire Suppression Division and Fire Prevention Division). One division’s ability to grant Leave Time shall have no effect on the other division’s ability to grant Leave Time. The vacation schedules shall be prepared by order of seniority until all employees have chosen their first one or two weeks of vacation, however an employee shall forfeit his/her turn to select and pass a vacation schedule on to the next employee if he/she fails to select within 72 hours. Final initial vacation schedules shall be posted when employee’s responses are received. Once all initial vacation are selected the schedule shall be returned to those employees entitled to additional vacation to pick their remaining vacation in order of seniority. Vacation changes shall be permitted with at least one-week notification but in no case shall seniority be used to displace and existing predetermined vacation. It is the intent of this policy that vacations be used whenever possible in lengths of at least a week with individual days reserved for those occasions when up to or less than a week of unearned vacation remains. The Department Head shall have the authority to adjust such

schedules so as to maintain an effective working force at all times. All vacation shall be taken in full days only, except if remain credit is less than a full day. The vacation year is coincident with the calendar year.”

The IAFF argues the Section is silent as to the explicit way vacation leave is to be approved by management after the initial requests in November and has proposed a procedure as an additional Section to be added to Article 8.

The Fire District opposes this proposal noting that there is currently a detailed SOP (902.1) and is functioning in the best interests of all involved.

After review of the parties Final Offers and submissions, I find there is insufficient evidence to overcome the burden to award the IAFF’s proposal and alter the *status quo*.

**Article 24, Acting Out-of-Title – Increase acting out-of-title pay from \$35 to \$60**

The IAFF submits that the current rate of \$35 has remained unchanged for 15 years and is proposing the rate of \$60 per shift.

The Fire District opposes this proposal noting that Fire Officers receive \$50 “out of title” pay for covering an entire command.

After review of the parties Final Offers and submissions, I find there is insufficient evidence to overcome the burden to award the IAFF’s proposal and alter the *status quo* in light of the rate paid to the Fire Officer’s.

Based upon the application of 16g criteria and the record before me, I respectfully enter the terms of this Award.

### **AWARD**

1. **Duration.** Five (5) years term January 1, 2019 to December 31, 2023.
2. **Article 18, Salaries.** The Salary Guides for both Firefighter/EMT and Firefighter/Inspector shall be a static guide on Steps 1 through 9 from January 1, 2019 through December 21, 2023. All Firefighter/Inspector and Firefighter/EMTs eligible for step movement shall do so each year of the contract. There shall be no cost of living increase for any Firefighter/Inspector or Firefighter EMT on any steps of either guide in 2019. Both salary guides shall be adjusted by 1.5% cost of living increase, effective January 1, 2020, 2021, 2022, and 2023, at Step 10 and higher.
3. **Art. 9 para. C, pg. 9:** Sick leave upon retirement to mirror existing law to read "Payment shall not exceed five hundred and twenty eight (528) hours, except employees hired after the effective date of P.L. 2010, c. 3 will be subject to those limits set forth."
4. The "Deputy Chief language will be changed to "Department Head."
5. **Article 25, Dues Deduction.** The following language in Article 25:

#### **"Article 25, Dues Deduction**

The District agrees to grant rights of dues deduction to the Association and will deduct Association membership dues from the pay of those Employees who individually and voluntarily request in writing that such deductions be made, in the amount as determined by the Association. For each employee who signs such an authorization card, the check-off shall commence in the pay period following the filing of the authorization card with the District. The District shall remit to the Association once a month, the monies collected for this purpose.

Employees who have authorized the payroll deduction of fees to the Association may revoke such authorization by providing written notice to the District, as prescribed by N.J.S.A. 52:14-15.9e, during the ten days following each anniversary date of their new employment. Within five days of receipt of notice from an employee of revocation of authorization for the payroll deduction of fees, the District shall provide notice to the Association of an employee's revocation of such authorization. The effective date of a termination in deductions shall be July 1 next succeeding the date in which notice of withdrawal is filed by an employee with the District."

6. **Article 41, Drug and Alcohol Policy.** Substitute the revised drug testing levels as set forth in Article 35, Paragraph E, Section 6 of the Drug and Alcohol Policy in

the FMBA contract, with the current testing levels in Article 41, Paragraph E, Section 6 of the Drug and Alcohol Policy in the Association's existing contract.

7. **Article 21, Training and Education.** Effective January 1, 2020, tuition reimbursement is limited to a single degree per level (e.g., one degree for Associate, Bachelor, and Masters) paid upon completion of the course and tuition reimbursement is limited to those classes where the employee receives a grade of "C" or higher.
8. All other proposals by the Fire District and the IAFF not awarded herein are denied and dismissed.
9. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.
10. Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken the statutory limitation imposed on the local tax levy cap into account in making the award. The Award also explains how the statutory criteria factored into my final determination.
11. I have also calculated the net, annual economic change in base salary, including step increments over the five (5) year term of the new agreement, as follows: 2019-\$101,985.00; 2020-\$92,466.00; 2021-\$101,791.00; 2022-\$100,082.00; 2023-\$115,758.00.

Dated: December 16, 2019  
Jersey City, New Jersey



Brian W. Kronick, Esq.  
Interest Arbitrator



State of New Jersey    }  
County of Hudson       } ss:

On this 16<sup>th</sup> day of December 2019, before me personally came and appeared Brian W. Kronick 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.

