

MEMORANDUM

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 
~~Michael~~ Michael Faden, Senior Legislative Attorney

SUBJECT: **Discussion:** Review of County government collective bargaining agreements

This worksession will discuss the amendments to the County's collective bargaining agreements with the Municipal and County Government Employees Organization (MCGEO), representing County employees who are in the OPT and SLT bargaining units, the Fraternal Order of Police (FOP), representing members of the police bargaining unit, and the International Association of Fire Fighters (IAFF), representing fire and rescue employees. See ©1-91 (Executive's Transmittal Memo, Summary, MCGEO Agreement, Arbitrator's Decision), ©92-108 (Executive's Transmittal Memo, Summary, FOP Agreement, Arbitrator's Decision), and ©109-197 (Executive's Transmittal Memo, Summary, IAFF Agreement, Arbitrator's Decision). The OMB Fiscal Impact Statement for these Agreements is at ©198-215.

Background

Each of these agreements resulted from an arbitrator's decision resolving an impasse in the negotiations between the County Executive and the respective union. The County's collective bargaining laws provide that an impasse in bargaining is resolved by an arbitrator jointly selected by the parties. Each party must submit a last best offer on each issue at impasse in one package. The arbitrator must select the entire package that the arbitrator determines is the most reasonable. The Council amended the criteria the arbitrator must consider by enacting Expedited Bill 57-10 on December 14, 2010. Under this new law, the arbitrator must evaluate and give the highest priority to the County's ability to pay for the last best offer. Each arbitrator applied the new criteria and concluded that the last best offer of the union was the most reasonable. Therefore, each collective bargaining agreement reflects the union's last best offer.

The Executive transmitted each of these agreements to the Council for review on April 1, 2011. However, the Executive did not recommend funding all of the economic provisions in the collective bargaining agreements in his FY12 Recommended Budget. The IAFF and the FOP each filed a prohibited practice charge against the Executive with the Labor Relations Administrator alleging that the Executive was required to recommend the arbitrated award under the collective bargaining laws. MCGEO filed an action in the Circuit Court alleging similar violations of the collective bargaining law. The County Attorney has opined that the Executive has the authority to refuse to recommend full funding of a collective bargaining agreement in his

recommended budget under Charter §303. See ©216-217. Each of these cases is currently pending. However, the Council does not need to resolve this issue. There is no dispute that the Council has the final authority to approve, reject, or modify each economic provision in the collective bargaining agreements.

Each of these agreements is subject to the Council review process outlined below.

Council Review

Under the County Employees Labor Relations Laws (Police: County Code §§33-75 through 33-85; County employees: County Code §§33-101 through 33-112; Fire and Rescue employees: County Code §§33-147 through 33-157), the County Council must review any term or condition of each final collective bargaining agreement requiring an appropriation of funds or enactment, repeal, or modification of a county law or regulation. On or before May 1, unless the Council extends this deadline for up to 15 days, the Council must indicate by resolution its intention to appropriate funds for, or otherwise implement the agreement, or its intention not to do so, and state its reasons for any intent to reject any part of an agreement. The Council is not bound by the agreement on those matters over which the Council has final approval. The Council may address contract items individually rather than on an all-or-nothing basis. See County Code §33-80(g); §33-108(g)-(j); §33-153(l)-(p).

If the Council indicates its intention to reject or opts not to fund any item, it must designate a representative to meet with the parties and present the Council's views in their further negotiations. The parties must submit the results of any further negotiations, or impasse procedures if the parties cannot agree on a revised contract, to the Council by May 10 (unless the May 1 date was extended).

This Committee is scheduled to revisit these issues on April 28.

Collective Bargaining Agreements

1) **General Wage Adjustment:** Each collective bargaining agreement contains no GWA for FY12.

2) **Service Increments:** The arbitration award for the FOP included a 3.5% step and longevity increase for all eligible members of the bargaining unit. OMB estimated that these increases would cost an additional \$1.438 million in FY12. The Executive did not include funding for these increases. Neither the MCGEO nor the IAFF agreements contain a step or longevity increase for FY12.

Council staff question: *Although the arbitrator for the FOP Agreement refused to consider the possibility that other bargaining units in County government, MCPS, M-NCPPC, and Montgomery College would expect similar increases, the Council must consider this possibility. Would a step increase for any employee be consistent with the County's need to reduce its structural budget deficit?*

3) **Pensions:** Neither the FOP nor the IAFF arbitration award included any changes to their members' retirement plans. FOP and IAFF bargaining unit members are in the defined benefit plan.¹

MCGEO unit members are split between the defined benefit plans and the defined contribution plans.² The MCGEO arbitration award would require those members in the defined benefit plans to make the same employee contribution in FY12 yet receive no pension benefit for FY12. The County's actuary estimated this change to create a one-time saving of \$17.321 million in FY12 for the County. See the Mercer letter at ©209-215. The potential savings would drop to between \$400,000 and \$1.2 million for FY13 and beyond, depending on how many employees decide to delay retirement because of this change. The MCGEO arbitration award would require a one-time 2% decrease in the employer contribution to the defined contribution plans in FY12.

The MCGEO arbitration award on pension benefits provides FY12 savings but has minimal structural budget effect in FY13 and beyond. The arbitrator concluded that the County does not have an on-going structural budget deficit because the County has balanced its budget each year. The arbitrator discounted the recent Office of Legislative Oversight (OLO) report on the County's structural deficit in favor of the testimony of an expert witness retained by MCGEO who asserted that the current gap between revenue and expenditures is a short-term issue that would resolve itself in the near future. However, the County has been balancing its budget in the last several years by paying for recurring expenses, such as employee compensation, with one-time revenues or savings, such as employee furloughs and no employee raises. If the Council accepts OLO's analysis of the County's structural budget deficit, then the MCGEO arbitration award would not begin to solve the recurring problem. The Executive's FY12 Recommended Budget includes a 2% increase in employee contributions to the defined benefit plans and a 2% decrease in the employer's contribution to the defined contribution plans. The Executive's proposal would be a structural change to employee compensation.

Council staff questions:

1. Should the retirement plan savings from employees in the defined contribution plans (RSP & GRIP) be similar to savings from employees in the defined benefit plans, although the cost per employee is much greater in the defined benefit plans?

2. Should the employee contribution for a member of a defined benefit plan be raised 2% for everyone, although the current employee contributions are different for different plans?

These issues will be discussed in greater detail in OLO's analysis of proposed changes to employee benefits.

¹Bill 45-10, currently pending before the Council, would create a two-tier disability retirement system for Group F (Police) similar to the current disability retirement system for Group G (Fire). The County's actuary estimated that the enactment of this Bill would save the County approximately \$2.7 million annually.

² Although the Guaranteed Retirement Income Plan (GRIP) is a cash balance hybrid plan rather than a pure defined contribution plan like the Retirement Savings Plan (RSP), we are referring to both the GRIP and the RSP together as the defined contribution plans because the portion of an employee's salary contributed by the employer is fixed in both.

4) **Health, dental, vision, and prescription drug benefits:** Neither the FOP nor the IAFF arbitration award included any changes to health, vision, dental, nor prescription drug benefits for bargaining unit employees. The MCGEO arbitration award would require all bargaining unit members in the CareFirst POS health plan to switch to the United Healthcare Select plan. OMB estimated the switch would save the County up to \$2.09 million in FY12 because the United Healthcare plan is a less expensive HMO. The MCGEO arbitration award did not make any changes in the vision, dental, or prescription drug benefits. The Executive recommended a revised cost share for all employees. Currently, employees pay either 20% or 24% of the premium for health, dental, and vision insurance. The Executive recommended raising the employee's share to at least 30%. Employees with an annualized salary between \$50,000 and \$89,999 would pay an additional surcharge of \$910 each year for a health or prescription drug plan. Employees with an annualized salary at or above \$90,000 would pay a \$1560 surcharge each year. OMB estimated changing the employee share to 30% would save the County \$8,229,530. OMB estimated the County's cost savings from the extra surcharge at \$7,418,000.

The MCGEO arbitration award requiring employees in the CareFirst POS plan to switch to the United Healthcare Select plan provides significantly less savings each year than the Executive's proposal. Therefore, if the Council does not approve the MCGEO arbitration award on the defined benefit pension described earlier, which would lump almost all of the \$17 million savings into FY12, the lower savings from the MCGEO arbitration award on health insurance is problematic. Although the Council may be able to designate United Healthcare as a sole source provider, forcing MCGEO members to transfer from CareFirst into United Healthcare without permitting these employees to choose the other HMO, Kaiser, would be anti-competitive. In fact, the Kaiser HMO is the lowest cost health care plan offered by the County. If the Council decides to approve the MCGEO arbitration award on health insurance, the Council could modify the proposal by eliminating CareFirst as an option and permitting affected employees to choose between the remaining two plans. The Council could apply this change to MCGEO unit members only or to both represented and non-represented employees.

Both the MCGEO arbitration award and the Executive's proposed changes were intended to take effect on July 1, 2011 and would require a new open season in the 5 weeks after the Council's scheduled adoption of the budget on May 26. Since this would be difficult to accomplish and would place the County on a different health plan schedule than most other employers, including the Federal government, the July 1 date is impractical. If health plan changes are rescheduled to January 1, the County's FY12 cost savings would be 50% less. The Executive proposed the following changes to the prescription drug plans.

Prescription Drug	Generics. Employees who buy a brand name drug when a generic equivalent is available would always pay the generic drug copay plus the difference between the cost of the brand name drug and its generic equivalent. Currently, this requirement is waived if a physician prescribes a brand drug and writes "dispense as written" on the prescription.	\$1,200,000 savings
	Lifestyle Drugs. The County would eliminate coverage for medications used to treat erectile dysfunction.	\$400,000 savings
	Mail-Order Copays. The copay for mail order prescriptions (up to a 90-day supply) would increase from one time to two times the copay for a 30-day supply purchased through a retail pharmacy.	\$200,000 savings

These issues will be discussed in detail in OLO's analysis of proposed changes to employee benefits.

5) **Life Insurance:** None of the collective bargaining agreements would change the existing life insurance benefit for bargaining unit members. However, the Executive recommended reducing the benefit as follows:

Life Insurance	30% Cost Share and Benefit Level. The life insurance benefit provided to all employees would be reduced from two times to one time annual salary. Employees' cost share would increase from 20% to 30% of premium.	\$1,200,000 savings
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This issue will be discussed in detail in OLO's analysis of proposed changes to employee benefits.

6) **Long-term disability:** None of the collective bargaining agreements would change the existing long-term disability benefit for bargaining unit members. However, the Executive recommended reducing the benefit as follows:

Long-Term Disability	30% Cost Share. Employees' cost share for long-term disability insurance would increase from 20% to 30% of premium.	\$48,000
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This issue will be discussed in detail in OLO's analysis of proposed changes to employee benefits.

7) **FOP Agreement – Tuition Assistance:** The Council approved suspending the tuition assistance program in FY11 for all employees when it adopted the FY11 Operating Budget last year. The Executive agreed with the FOP to reinstate the tuition assistance program with a cost cap of \$135,000 for FY12. The Executive funded this program in his Recommended FY12 budget.

The tuition assistance program (TAP) includes two components – Job Improvement Tuition Assistance Program (JITAP) and the Employee Training Assistance Program (ETAP). ETAP funds education or training to obtain a certificate or college undergraduate or graduate degree. JITAP funds job training courses and seminars that are not intended to lead to a certificate or college degree. The FOP agreement states that JITAP funds are not available for unit members.³ However, the agreement also includes a provision creating a procedure for management and FOP to jointly approve a list of courses and institutions offering job-related training that would qualify for tuition assistance. Qualifying job-related training courses from institutions that are not an accredited college or university is part of the JITAP program.

³ FOP officials publicly stated that FOP members were never entitled to participate in the JITAP program during Council meetings discussing the Inspector General's Report on Tuition Assistance.

The Executive suspended the tuition assistance program during FY10 as a result of an Inspector General report about abuse of the program by members of the police bargaining unit.⁴ The County spent \$499,187 on tuition assistance for police officers in FY09, representing approximately 49% of TAP funds spent for all County employees that year. Therefore, the \$135,000 cap on tuition assistance in this agreement is a significant decrease in expenditures over past years.

Council staff questions:

1. *Should the Council fund tuition assistance in FY12 for FOP members while continuing the program suspension for all other County employees?*

2. *What procedures has the County adopted to avoid the problems identified by the Inspector General in the use of tuition assistance funds?*

8) **IAFF Agreement – Organ Donor Leave:** The IAFF Agreement allows bargaining unit members to use additional paid leave to serve as an organ donor. An employee would be entitled to receive up to 7 days to serve as a bone marrow donor and up to 30 days to serve as an organ donor. In 2000, the General Assembly enacted a law providing organ donor leave for State government employees, now codified at Md. Code State Personnel and Pensions Art. §9-1106. The federal Organ Donor Leave Act, enacted in 1999, provides additional leave for a federal government employee who serves as an organ donor. OMB was unable to estimate the fiscal impact of this change. The Executive indicated an intention to extend this leave to non-represented employees by regulation.

9) **IAFF Agreement – Critical Incident Stress Management (CISM):** The IAFF Agreement would allow paid time off for CISM team members for training and meetings. The Executive recommended funding for this provision. OMB estimated the cost to implement this provision at \$69,760 in FY12.

10) **IAFF Agreement – Out of Class Work:** The IAFF Agreement would make Lieutenants eligible for an additional 5% of salary for working out of class in any 6-month period more than 50% of the time in a higher graded position. The Executive recommended funding for this provision because it would have no new additional cost. However, the Executive recommended no funding to pay lower level fire fighters out of class pay for an assignment to an ALS unit because the Department is no longer assigning Lieutenants to ALS units. OMB estimated savings from this recommendation at \$65,600 in FY12.

11) **MCGEO Agreement – Multilingual Pay:** The MCGEO Agreement would make bus drivers eligible to receive a multi-lingual pay differential at an estimated cost of \$145,238 in FY12. The Executive did not recommend funding for this.

12) **MCGEO Agreement - Classification Studies:** The MCGEO Agreement would require the County to conduct classification studies for the positions of Correction Kitchen

⁴ The Inspector General's Report can be reviewed on the Council's website at <http://www.montgomerycountymd.gov/content/InspectorG/pdf/igactivity/tuition.pdf>. The County is still investigating possible abuses of the TAP program by FOP members.

Officer, Equipment Operator I, Automated Traffic Enforcement Field Tech, Fire & Rescue Mechanical Occupational Series, Public Service Craftworkers, and School Healthroom Aides. OMB estimated that these studies would cost a total of \$100,000. The Executive did not recommend funding for this provision.

13) **MCGEO Agreement – Court Time for Animal Services Employees:** The MCGEO Agreement would require 3 hours of pay for time spent in Court on a regular day-off or on off hours and FTO pay for training. OMB was unable to estimate the fiscal impact for this.

14) **MCGEO Agreement – Decrease Attendance Incentive:** The MCGEO Agreement would reduce the attendance incentive for operators, motor pool attendants, and transit coordinators from \$1150 per year to \$250 per year. OMB could not estimate the savings from this change.

Council Authority to Change Employee Benefits

The Executive's FY12 Recommended Budget includes significant changes to the retirement plans and the health, vision, dental, prescription drug, and life insurance benefits for all current County employees, including members of each collective bargaining unit. These proposed changes raise legal issues concerning the duty to bargain with the certified union for represented employees and a possible impairment of a contract in violation of the Contract Clause of the U. S. Constitution (Art. I, §10, clause 1). The County Attorney issued a comprehensive opinion on the Council's authority to modify employee compensation and benefits on October 28, 2010. See ©218-231.

Retirement benefits are created in County law and are contractual obligations of the County. The Council can avoid any Contract Clause issues by making only prospective changes that do not affect accrued benefits. The Executive's proposed 2% increase in an employee's contributions to the defined benefit plans is prospective because it only affects years not yet worked. The Executive's proposed 2% decrease in the employer's contribution to the defined contribution plans is similarly prospective only. The MCGEO last best offer to have its members make the current employee contribution to the defined benefit plan in FY12 but receive no service credit for FY12 also only affects years not yet worked. In addition, since it is the result of collective bargaining, MCGEO unit members cannot claim an impaired contract since they have "agreed" to this change in their contract.

In contrast to retirement benefits, health, vision, dental, prescription drug, and life insurance benefits are not required by County law. Although some of these benefits for represented employees are covered in the collective bargaining agreements, each provision is subject to Council appropriation each year of the agreement. Therefore, the proposed changes to these benefits for current employees do not raise a Contract Clause issue.

Retirement, health, vision, dental, prescription drug, and life insurance benefits for active employees are all mandatory topics of collective bargaining. The Executive, as the employer under each collective bargaining law, has the duty to bargain with the union representing these employees on these benefits. However, the Council does not have a duty to bargain with the unions over any issue. The Council must review, and approve or reject, each economic provision

of a collective bargaining agreement. The Council must appropriate funds each year to implement any provision in a collective bargaining agreement providing health, vision, dental, prescription drug, or life insurance benefits. Therefore, the Council has the legal authority to condition the appropriation of funds for these employee benefits on changes in these benefits, including the changes recommended by the Executive. If the Council approves changes to these benefits in the approved budget, the unions are free to seek further negotiated changes in future collective bargaining sessions with the Executive.

<u>This packet contains:</u>	<u>Circle #</u>
Executive Transmittal Memo for MCGEO Agreement	1
MCGEO Summary	2
MCGEO Agreement	15
MCGEO Arbitration Decision	58
Executive Transmittal Memo for FOP Agreement	92
FOP Summary	93
FOP Agreement	95
FOP Arbitration Decision	97
Executive Transmittal Memo for IAFF Agreement	109
IAFF Summary	110
IAFF Agreement	120
IAFF Arbitration Decision	140
OMB Fiscal Impact Statement	198
County Attorney Letter dated March 15, 2011	216
County Attorney Opinion dated October 28, 2010	218

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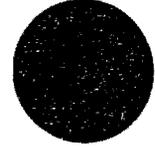
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

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Isiah Leggett
County Executive

MEMORANDUM

April 1, 2011



TO: Valerie Ervin, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Memorandum of Agreement between the County and MCGEO

I have attached for the Council's review the agreement resulting from the recent collective bargaining negotiations between the Montgomery County Government and the Municipal & County Government Employees Organization/United Food and Commercial Workers Union Local 1994 (MCGEO). The agreement is the product of an Interest Arbitration Decision by arbitrator Homer C. LaRue in favor of MCGEO. A copy of the Opinion and Award is attached. The agreement reflects the changes that will be made to the existing Collective Bargaining Agreement effective July 1, 2011 through June 30, 2012. I have also attached a summary of the changes which denotes if a contract item is funded in my proposed budget. The fiscal impact statement has been transmitted to Council as a separate document by the Office of Management and Budget.

cc: Joseph Adler, Director, Office of Human Resources
Joseph Beach, Director, Office of Management and Budget
Marc Hansen, County Attorney, Office of the County Attorney

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MONTGOMERY COUNTY
COUNCIL

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Summary of Proposed Labor Agreement with MCGEO Effective FY 2012

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
1.	5.2/Wages	FY 10 GWA continues to be postponed for FY 12	No	Yes	No	No	See Fiscal Impact Statement
2.	5.4/Multilingual Pay	No employees will be certified for multilingual certification in FY 12 Bus Operators will become eligible effective 7/1/2011	No	Yes	No	No	See Fiscal Impact Statement Union's LBFO included adding Bus Operators; County did not agree
3.	5.9/Overtime	Removal of partial hour language due to full implementation of electronic tracking Stone Street print shop employees will be compensated at 1.5 hourly rate for overtime Members shall be given the right to refuse voluntary overtime Committee to review overtime at ECC	No	Yes	No	No	
4.	5.24/EVT Certification	FRS LMRC to review incentive programs for FRS mechanics to include payment for EVT master certifications and necessary limits	No	No	No	No	
5.	5.27/Mileage Reimbursement	Any IRS mileage reimbursement rate change shall be effective within 10 days of the change	No	No	No	No	
6.	5.31/Certification Reimbursement	Committee to review whether or not to allow employees to receive compensatory time to take certification exams and overtime pay to attend necessary trainings	No	No	No	No	

Summary of Proposed Labor Agreement with MCGEO for FY 2012

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No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
7.	5.32/Wages and Benefits	If the County negotiates pay improvements for any County group or with MCPS, those improvements shall be applied to MCGEO members	No	No	No	No	CE's proposed budget does not include pay improvements for any County employees
8.	9.10/ Classification Issues	Classification reviews will be suspended for this agreement	No	No	No	No	
9.	9.10/ Classification Issues	<p>County will conduct classifications of the following job classes (3 each FY of agreement):</p> <ol style="list-style-type: none"> 1. Correction Kitchen Officer 2. Equipment Operator I 3. Automated Traffic Enforcement Field Tech 4. Fire & Rescue Mechanic Occupational series, 5. Public Service Craftworkers 6. School Healthroom Aides <p>These reviews will be subject to available funding</p>	No	Yes	No	No	<p>Subject to available funds, no additional funds are recommended in CE's proposed budget</p> <p>Estimated cost \$100,000</p>
10.	9.18/Commuting Costs	Employees will be able to set up a Qualified Transportation Fringe Benefits account for pre-tax earnings to be set aside by the employee for commuting costs	No	No	No	No	
11.	9.19/Health Tests	<p>Employees will be supplied, if requested, a copy of the report of examination</p> <p>CLD exams shall be done in accordance with the law</p>	No	No	No	No	

Summary of Proposed Labor Agreement with MCGEO for FY 2012

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No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
12.	10.5/Grievance Step I	Departmental response period increased to 15 working days	No	No	No	Regulations will be changed to apply to County grievances filed by non-bargaining unit employees	
13.	10.5/Grievance Tracking	Parties agree to implement an electronic grievance submission/tracking program	No	No	No	No	
14.	10.14/ADR Presentations	Presentations by parties at ADR hearings will not exceed 30 minutes	No	No	No	Regulations will be changed to apply this to non-bargaining unit employees	
15.	14.1/ Annual Leave Definition	Employees will not request annual leave that they have not accrued	No	No	No	No	
16.	14.13/Annual Leave Incentive Program	Removed from the contract	No	No	No	No	
17.	15.1/Sick Leave Definition	Employees will not request sick leave that they have not accrued	No	No	No	No	
18.	15.6/Use of Sick Leave	Employees must leave a contact number if leaving a voice message for the supervisor	No	No	No	No	
19.	15.7/Sick Leave Donor Program	Committee to review whether or not employees may receive sick leave donations to care for a parent with a serious health condition	No	No	No	No	

Summary of Proposed Labor Agreement with MCGEO for FY 2012

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No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
20.	15.12/Sick Leave Reduction Incentive Program	Removed from the contract	No	No	No	No	
21.	19.1/Admin leave for Bereavement Leave	Change from consecutive to any working days 3 days must be used within 15 days of the death Additional time off requests must not be unreasonably denied	No	No	No	No	
22.	20.3/Substitute Holidays	Independence Day and Veteran's day added to language about Saturday or Sunday holidays	No	No	No	No	
23.	21.2/Health Benefits	Provides for no change in county 80 percent premium contribution for employee health care plans premiums.	Yes	Yes	No	No	CE's proposed budget recommends increasing employee share of insurance premiums for benefit plans other than health from 20% to at least 30% and adding salary based tiers.
24.	21.3/Employee Benefits Committee	Explore the feasibility to establish a Health Board of Trustees	No	No	No	No	

Summary of Proposed Labor Agreement with MCGEO for FY 2012

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No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
25.	21.5/Benefits Cost Share	Provides for no change in County 80 percent premium contribution for benefit plans other than health care plans included in 21.2	Yes	Yes	No	No	CE's proposed budget recommends increasing employee share of insurance premiums for benefit plans other than health from 20% to at least 30% and adding salary based tiers.
26.	21.14/ Interagency Health Benefits Board of Trustees	Will report by 2/1/2012	No	No	No	No	
27.	21.16/Transfer to United Healthcare	All bargaining unit members in Carefirst shall be transferred to United Healthcare Select	No	Yes	No	No	This was in union's LBFO but County will not require compliance See Fiscal Impact Statement
28.	21.17/Healthcare Cost Management	Parties will work with United Healthcare to develop health care cost management strategy to impact the medical cost drivers	No	No	No	No	
29.	29.9/LMRC	Create a subcommittee to review leave issues and will report back by 11/1/2011 Topics: approval for annual leave; doctor's notes for leave abuse; time frame to consider unscheduled absences for discipline; stress management program	No	No	No	No	

Summary of Proposed Labor Agreement with MCGEO for FY 2012

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No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
30.	31/Maintenance of Standards	Removal of repeated language regarding call back pay	No	No	No	No	
31.	32.5/Safety Shoes	County's contribution towards employee safety shoe purchase decreases to \$121.67 each fiscal year of the agreement	No	No	No	No	See Fiscal Impact Statement on savings County currently spends \$55,000 per year for safety shoes. There is some possibility for future savings.
32.	34.2/Safety and Health Committee	Language removed from contract	No	No	No	No	
33.	34.14/Training	Safety training programs will be offered by the County	No	No	No	No	
34.	34.16/Respiratory Equipment	Certification of respiratory equipment will be maintained by the County	No	No	No	No	
35.	34.17/Driver's License Program	Employees required to routinely drive/operate a County vehicle must maintain a valid driver's license Employees must notify the Employer if license is suspended	No	No	No	No	
36.	34.20/On the Job Accidents	Parties will create a joint labor-management committee to review on the job accidents and will report by 6/30/2012	No	No	No	No	

Summary of Proposed Labor Agreement with MCGEO for FY 2012

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No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
37.	34.22/Home Visits/ Investigations	Employees will not be required to conduct home visits if they feel the situation to be dangerous Supervisors will determine if assistance is needed and/or make a second employee or police escort available	No	No	No	No	
38.	34.23/Mold/ Mildew	Corrective action will be taken to eliminate mold in a bargaining unit work environment	No	No	No	No	
39.	38.1/Non-Discrimination	Sexual harassment also included in this section	No	No	No	No	
40.	38.3/38.4/Non-Discrimination	Language removed from contract	No	No	No	No	
41.	39.1/Notice of Work Rule Change	30 calendar days notice must be given; reduced from 30 business days.	No	No	No	No	
42.	41.4/Employee Retirement System	Provides for no changes to Group E retirement contributions	Yes	Yes	Yes	No	CE's proposed budget recommends increasing employee contribution by 2% of salary. See Fiscal Impact Statement

Summary of Proposed Labor Agreement with MCGEO for FY 2012

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
43.	41.10/Retirement Contribution	The Employer will not make retirement contributions to groups A, E, and H during FY12 These groups will also not earn service credit during FY 12 but will continue to contribute to the ERS	No	Yes	No	No	This was in union's LBFO but County will not require compliance
44.	42/Duration	July 1, 2011 through June 30, 2012	No	No	No	No	
45.	44.2/Contributions	RSP bargaining unit members will be credited with a 6% County contribution instead of 8% for FY 12 Participants will pay their full rate	No	Yes	Yes	No	This was in Union's LBFO and the CE's proposed budget includes this provision See Fiscal Impact Statement
46.	44.6/Severance Pay	GRIP participants will be eligible to receive severance benefits	No	No	No	No	Technical change – no fiscal impact
47.	44.7/GRIP	GRIP bargaining unit members will be credited with a 6% County contribution instead of 8% for FY 12 Participants will pay their full rate	No	Yes	Yes	No	This was in Union's LBFO and the CE's proposed budget includes this provision See Fiscal Impact Statement
48.	44.9/Retirement Plan Liability Reductions	Parties will analyze alternative funding strategies for current retirement options Should no agreement be reached, alternatives will become subjects of bargaining beginning 11/1/11	No	No	No	No	

Summary of Proposed Labor Agreement with MCGEO for FY 2012

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No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
49.	52/Investigations	The Union will provide as much information as possible when filing an Article 52	No	No	No	No	
50.	Appendix II/HHS	Removal of all accomplished language Removal of facilities/maintenance language HHS to provide year end guidelines to SHRAs requesting help for year-end duties 3 times a year HHS will provide drop down selection boxes for top 3 preferred assignments for school health services	No	No	No	No	
51.	Appendix III/Forensics	Traffic/Safety vests will be issued Voluntary self defense class will be offered LRMC Items: (1) study safety/cleanliness of building; (2) Ballistic/body armor will be provided; and (3) implement 4day/10hour work schedule	No	No	No	No	
52.	Appendix III/PSAs	LMRC Item: Improve security at all stations	No	No	No	No	

Summary of Proposed Labor Agreement with MCGEO for FY 2012

Page 10

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
53.	Appendix III/ECC	LMRC Items: (1) Fence perimeter; (2) Improved parking lot lighting; and (3) Security protocols Employees scheduled for pre-approved vacation leave will not be given short notice overtime	No	No	No	No	
54.	Appendix III/PSTA	LMRC: study on hazardous working conditions	No	No	No	No	
55.	Appendix III/Animal Services	3 hours court time for employees FTO pay according to Article 5.23 LMRC Items: (1) Discuss call back pay	No	Yes	No	No	Indeterminate fiscal impact
56.	Appendix III/Homeland Security	Appendix XII for Homeland security moved in its entirety to Appendix III Cell phone for sign out and use by Field Supervisors Sergeant Chevrons to be stitched into Security jackets LMRC Items: (1)) implement 4day/10hour work schedule; (2) implement security plans for each building, with training; and (3) Require two person response to night hour alarms	No	No	No	No	

Summary of Proposed Labor Agreement with MCGEO for FY 2012

Page 11

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
57.	Appendix IV/DOCR LMRC	LMRC Items: (1) Consistent policy enforcement; (2) Visiting police officers' ability to carry guns; (3) "Two person post" assignments to be reviewed; (4) Non-toxic cleaning products and floor stripping agents; (5) Install secured, fenced parking area; (6) Rotating stand by for therapists and psychiatric nurses at MCCF; (7) Cutting trees along fence line at MCDC; (8) Study group for promotional process; (9) Grace period for late slips; and (10) Special Police Officer committee.	No	No	No	No	
58.	Appendix IV/PRC	FTO program with pay according to Article 5.23 Issue handcuffs to staff; mandatory to carry LMRC Items: (1) Additional employee parking; (2) new location of parking lot cameras; and (3) Research 6 week state training	No	No	No	No	Handcuffs to be purchased prior July 1, 2011 and costs to be absorbed within the Department
59.	Appendix IV/DOCR Other	Broken medical equipment will be serviced or replaced Clocks for key check and roll call room at MCCF and MCDC will be clocks of record Mandatory self defense class will be provided by the County	No	No	No	No	

Summary of Proposed Labor Agreement with MCGEO for FY 2012

Page 12

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
60.	Appendix V/ Liquor Control	New Uniform safety standards for inspections and equipment Research an incentive program to reduce sick leave usage and workplace accidents	No	No	No	No	
61.	Appendix IX/Performance	Define "coaching" as a nondisciplinary tool to improve employee motivation and work	No	No	No	No	
62.	Appendix X/Permitting Services	Items referred to LMRC: (1) Eliminate Customer Service Division and return employees to other divisions; (2) Provide "real time" access to Hansen Data and create redundancy capability; and (3) Create permit renewal system(1)Provide 3 ball caps, 1 winter cap, 1 pair safety boots, 1 set overalls, and 6 shirts annually; (2) Provide hard copy calendars annually; (3) Provide ink cartridge replacements when requested	No	No	No	No	
63.	Appendix XI/Attendance Policy	Delete current Attendance policy and replace with new language Policy applies to Operators, Motor Pool Attendants, and Transit Coordinators Progressive discipline will be followed on a tiered basis leading up to dismissal Employees who have no unscheduled absences in a calendar year will receive \$250	No	Yes	No	No	Indeterminate savings Incentive decreases from \$1150 per year to \$250 per year.

Summary of Proposed Labor Agreement with MCGEO for FY 2012

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
64.	Appendix XII/Homeland Security	Entire Appendix moved to Appendix III	No	No	No	No	
65.	Appendix XIII/Libraries	LMRC Items: (1) MCGEO to be consulted with involuntary transfers; (2) Training should not be obstructed by management; (3) Staffing levels should reflect work load; and (4) Address work-life issues	No	No	No	No	
66.	Appendix XX/General Services	<p>New appendix to handle building maintenance issues in other departmental appendices</p> <p>Jointly create a tool list and prioritize list</p> <p>Carpet & restroom cleaning at HHS facilities referred to Building Maintenance subcommittee of LMRC</p> <p>LMRC Items: (1) Accommodations for employees who are required to spend the night on Employer's premises</p>	No	No	No	No	

**MEMORANDUM OF AGREEMENT
BETWEEN
THE MONTGOMERY COUNTY GOVERNMENT
AND THE
MUNICIPAL & COUNTY GOVERNMENT EMPLOYEES ORGANIZATION
UNITED FOOD & COMMERCIAL WORKERS, LOCAL 1994**

The Montgomery County Government (Employer) and the Municipal & County Government Employees Organization/United Food and Commercial Workers Union Local 1994 (Union), agree that their collective bargaining agreement effective July 1, 2010, through June 30, 2011, is extended in full force through June 30, 2012, and is subject to the amendments shown on the following pages.

Please use the key below when reading this agreement:

<u>Underlining</u>	<i>Added to existing agreement.</i>
[Single boldface brackets]	<i>Deleted from existing agreement.</i>
* * *	<i>Existing language unchanged by parties.</i>

The parties agree to amend the contract as follows:

* * *

ARTICLE 5 - WAGES, SALARY, AND EMPLOYEE COMPENSATION

* * *

5.2 Wages

* * *

(f) The 4.5 percent wage adjustment effective the first full pay period after July 1, 2009 shall be postponed and shall not be effective in FY2012.

* * *

5.4 Multilingual Pay Differential

* * *

(d) Beginning July 1, 2011, no additional employees will be tested for multilingual certification. The multilingual pay program may be reopened at a later date by mutual

written agreement of the parties.

- (e) Ride On bus operators shall be included as an eligible class to receive the multilingual pay differential in accordance with Article 5.4 effective July 1, 2011.
- (f) In addition, the parties shall jointly review the eligibility of the 108 bargaining unit members that the County proposes to discontinue eligibility for the multilingual pay differential for final determination.

* * *

5.9 Overtime

* * *

- (d) Overtime is paid at the rate of 1½ times the employee's gross hourly rate of pay, including pay differentials[, in accordance with the following schedule for partial hours, until the date upon which the Employer implements the “electronic timekeeping technology” described below:]

[1 - 15 minutes = no compensation
16 - 45 minutes = 30 minutes overtime compensation
46 - 60 minutes = 60 minutes overtime compensation]

[During the term of this Agreement the Employer intends to implement electronic timekeeping technology. As a result, bargaining unit employees will no longer be required to round overtime to the nearest fifteen (15) minute or thirty (30) minute increment.] Employees will report actual overtime worked on a minute by minute basis. [Upon implementation of this technology, subsection (d) above will no longer be operative. The Employer will provide sixty (60) calendar days notice to the Union prior to implementation of the technology.]

* * *

- (h) Voluntary and Involuntary Overtime

* * *

(4) Bargaining Unit members assigned to the Stone Street print shop shall be compensated at 1½ times their regular hourly rate when in an overtime status and shall have right for first refusal for bargaining unit work.

* * *

- (k) With the exception of the Emergency Communications Center (ECC) and any department where an agreement on overtime already exists, UFCW Local 1994

MCGEO bargaining unit members shall be given the right of first refusal for UFCW Local 1994 voluntary overtime work. The parties agree to create a joint labor-management study committee consisting of three (3) representatives appointed by management and three (3) representatives appointed by the Union to study the assignment of work at the ECC. This committee will report back to the parties no later than June 30, 2012.

* * *

5.24 ASE Certification Incentive Pilot Program

(a) This incentive program applies to employees assigned to the Division of Fleet Management Services. Eligible employees would receive \$100 for each valid ASE examination for which a passing score is received up to a maximum of 20 examinations. In addition, each employee who achieves active "MASTER" status would also receive a \$1,000 incentive up to a maximum of 2 Master Certifications. The maximum ASE-related incentive that any employee can receive in one year would be \$4,000.00. Only active ASE certifications will receive the pay incentive.

(b) EVT Certification

The parties agree to have the Fire/Rescue departmental LMRC review bargaining unit members assigned to Central Maintenance of Montgomery County Fire and Rescue Services. The LMRC shall look at the following possible incentive program: Eligible employee shall receive \$1000 for each valid EVT master certification. Employees would be able to receive 30 certifications a year (to include ASEs and EVTs). The maximum incentive that any employee can receive in one year would be \$8000.

* * *

5.27 Personal Vehicle Mileage Reimbursement

All bargaining unit members who are required to use their personal vehicles will be reimbursed mileage in accordance with Administrative Procedure No. 1-5, *Local Travel Guidelines*. However, employees will be reimbursed at the rate of \$0.485 per mile for all miles in excess of 7500 per year. If the IRS reimbursement rate increases during the term of this Agreement, then tier 1 of the above reimbursement schedule (\$0.445) shall be adjusted accordingly within ten (10) working days of the IRS change.

* * *

5.31 Professional License/Certification Reimbursement

* * *

The parties agree to create a joint study committee consisting of three (3) representatives from each party to look at the following: Bargaining unit members who are required to maintain/obtain certifications (to include ASEs and EVTs) shall receive compensatory time for time to take the test. Additionally, employees required to attend classes or training necessary for the maintenance of certification on non work time, shall be compensated at one and one-half (1½) times their normal rate of pay. This study committee shall report its recommendations to the parties no later than November 1, 2011.

* * *

5.32 Wages and Benefits

If at any time during this fiscal year, the County implements improvements in rates of pay under Article 5, Section 1 or Appendix VII with groups of employees outside of the OPT/ SLT bargaining units within the County Government or MCPS, such improvements shall be provided to all bargaining unit members covered by this agreement.

* * *

ARTICLE 9 - WORKING CONDITIONS

* * *

9.10 Classification Issues

* * *

- (f) Classification and grade level review of an occupational class that is predominately populated by OPT or SLT bargaining unit positions, or a review of the classification assignment of an individual position, may be requested by the Union at any time during the month of June. Effective July 1, 2011, classification reviews will be suspended for the duration of this agreement.

* * *

- (o) The County shall conduct classification reviews of the following job classifications during FY 12:

1. Correction Kitchen Officer
2. Equipment Operator I
3. Automated Traffic Enforcement Field Technician
4. Fire & Rescue Mechanic Occupational series
5. Public Service Craftworkers
6. School Healthroom Aides

The County shall conduct an independent classification review of the Case Manager occupational series in accordance with 9.10

The County shall conduct classification reviews of three of the above mentioned job classifications during each fiscal year of this agreement. The Union will select the three of classifications from the above list. These reviews are subject to available funding.

* * *

9.18 The County will allow the employee to set up a Qualified Transportation Fringe Benefits account through the relationship with the Montgomery County's PayFlex contractor in which the employee can set-aside pre-tax earnings up to \$230/month for commuting costs and from which the employee can be reimbursed using the SmartBenefits Program.

9.19 Health Tests

The bargaining unit member shall be given, upon request, a report of the examination and a confidential record shall be kept by the Employer. In addition, all CDL related examinations shall be done in accordance with any applicable laws.

ARTICLE 10 - GRIEVANCES

* * *

10.5 Procedure

- Step 1 A written grievance must be presented to the immediate supervisor and Department Director by the Union within 30 calendar days from the date of the event giving rise to the grievance or the date on which the employee knew or should have known of the event giving rise to the grievance. The immediate supervisor/Department Director shall provide a written response within [7 calendar] 15 working days of receipt of the grievance. If the Union is not satisfied with the response or no response is given, the grievance may be appealed to Step 2 to the Office of Human Resource in writing within 10 calendar days of receipt of the written response from the immediate supervisor.
- Step 2 Upon receipt of a written appeal from Step 1, the CAO or designee shall meet with the Union and the Department within thirty (30) working days. The purpose of the meeting is to attempt to resolve the grievance. If the grievance is not settled at this meeting, the CAO or designee shall respond in writing to the grievance within forty-five (45) calendar days after the meeting.

During the course of this agreement, the parties agree to select and implement an electronic grievance submission and tracking system using funds available through the County-wide LMRC.

* * *

10.14 Alternative Dispute Resolution Processes

* * *

(a) Pre-discipline Settlement Conferences

* * *

- (5) The Committee reviews the recommended level of discipline and the facts of the case and makes a non-binding recommendation. Each side is permitted to make a brief presentation before the Committee not to exceed 30 minutes. Presentation and format shall be established by the Committee.

* * *

ARTICLE 14 - ANNUAL LEAVE

14.1 Definition

Annual leave is earned paid leave granted to eligible employees for vacations and other personal use. Employees may not take leave they have not accrued.

* * *

[14.13 Annual Leave Incentive Program

At the County's request and with an employee's consent, an employee may perform their normal duties while receiving pay for annual leave.

- (a) The employee must have annual leave approved and scheduled in advance.
- (b) Employees may receive a maximum of 80 hours of annual leave per leave year while performing their normal duties. Employees may "cash in" the minimum number of hours of annual leave equivalent to the number of hours they are scheduled to work in a normal workweek (e.g. 40 hours scheduled and worked = 40 hours annual leave eligible to be cashed in), but not less. This program is not designed to provide an incentive for individual annual leave days scheduled to be off.

- (c) This process will be utilized by the parties as a one-year pilot project in the Department of Public Works and Transportation: Division of Transit Services and the Division of Fleet Management Services. The project may be extended an additional year by joint agreement.
- (d) For the purpose of this pilot program the annual leave pay-out will be treated and paid as a lump-sum and will be deducted from the employees accrued annual leave balance. The annual leave "cashed in" does not count towards overtime eligibility.]

* * *

ARTICLE 15 - SICK LEAVE

15.1 Definition

- (a) Sick leave is earned, paid leave granted to eligible employees for periods of absence because of personal illness; injury; medical quarantine; medical, dental, optical, or psychological examinations and treatments; or any temporary disability caused or contributed to by pregnancy, miscarriage or childbirth. Employees may not take leave they have not accrued.

* * *

15.6 Use of Sick Leave

- (c) Whenever supervisors are not available for sick leave calls, the employee shall be permitted to leave a message with a person designated by the supervisor to receive such calls. When leaving a message, employees must provide contact information to allow the supervisor to seek verification.

* * *

15.7 Sick Leave Donor Program

* * *

- (a) Approval of sick leave donations; employee eligibility to receive sick leave donations
 - (1) A department head, or designee (other than the employee's supervisor), will approve a sick leave donation for an employee who reports to the supervisor, only if the employee:

* * *

(B) has an extended illness or injury that causes the employee to be unable to work for more than 7 consecutive calendar days or the employee is the primary caretaker for the employee's spouse or child who has a serious health condition;

(1) Add as new: "employee's parent": The County proposes a joint labor/management study committee, consisting of equal number of participants, to determine the need for such a provision. The study committee will make recommendations to the parties.

* * *

[15.12 Sick Leave Reduction Incentive Pilot Program

Employees of the Emergency Communications Center, Department of Correction & Rehabilitation, and Division of Transit Services shall be eligible to participate in a Sick Leave Reduction Incentive Pilot Program during FY02.

- (a) On each Monday following every second payday, a lottery shall be held in each of the units identified for this pilot program.
- (b) The names of all employees who did not use any sick leave during the previous two pay periods shall be entered into a lottery drawing for \$100.00.
 - (c) For every 10 employees entered into the lottery, one name will be drawn.
 - (d) The parties shall meet to discuss the implementation of this program.
- (e) After FY02, the parties shall negotiate the continuation and/or expansion of this program to other work units.]

* * *

ARTICLE 19 - ADMINISTRATIVE LEAVE

19.1 Approval Authority

* * *

- (f) A full-time or part-time employee may be granted paid leave for a maximum of 3 [consecutive] work days in the event of a death in the immediate family which includes

the employee's parent, stepparent, spouse, brother or sister, child or stepchild, spouses' parent, grandparent, grandchild, spouses' grandparent, legal guardian, or any other relative living with the employee at the time of death. The three (3) work days granted under this section must be used within fifteen (15) days of the death. The Chief Administrative Officer may approve administrative leave for the death of other individuals related by blood or affinity whose close association with the employee is the equivalent of a family relationship. Bargaining unit members who require additional time off beyond these three (3) days may request additional reasonable time off charged to annual, compensatory, or personal leave; such leave shall not be unreasonably denied.

* * *

ARTICLE 20 - HOLIDAY LEAVE

* * *

20.3 Substitute Holidays

* * *

- (e) Whenever Christmas Day, December 25, [or] New Year's Day, January 1, Independence Day, July 4, or Veteran's Day, November 11, falls on either a Sunday or Saturday, it will be considered a holiday for that year for an employee who has to work. The same rule must apply to an employee who may be off the holiday but who is required to work on the substitute holiday.

* * *

ARTICLE 21 - BENEFITS

* * *

21.3 Employee Benefits Committee

- (a)

* * *

The purposes and functions of the Employee Benefits Committee shall be to:

- (1) review existing employee benefits and their provisions, and including cost containment; [and]

- (2) make findings and/or recommendations to the parties regarding changes in employee benefits and cost containment initiatives.
- (3) explore the feasibility of establishing a Health Benefits Board of Trustees consisting of eight trustees, four appointed by the County and four appointed by the Union. Possible roles for this Board would include: assuming the administration of the fund to include but not limited to the review of the County health insurance experience data; study methods of cost control and educate employees regarding health insurance utilization and health care; decide cost containment measures and select providers; and adjudicate all claim denials and adjudicate worker compensation claims.

The Committee shall meet not less than once a month during the months of February through mid-November. Meetings during the period of mid-November through January 31 may be scheduled upon mutual consent by the parties. A quorum for conducting business shall consist of at least 3 members appointed by each party.

* * *

21.14

* * *

- (b) The parties agree to jointly establish an interagency labor/management study committee that will review the feasibility of creating an interagency, multi- employer Health Benefits Board of Trustees to assume the administration of the participating agencies' health insurance funds/programs. The joint study committee will also consider all reasonable issues regarding the subject of health benefits cost containment. Membership on the joint study committee will be equally split between union and management representatives. Each participating agency and its unions will be represented by an equal number of participants. The committee will present its report by [December 31, 2010] February 1, 2012.

* * *

21.16 Transfer from Carefirst to United Healthcare

All bargaining unit members currently enrolled in Carefirst shall be moved to United Healthcare Select.

21.17 Health Care Cost Management

- (a) The parties shall work with United Healthcare beginning no later than August 1, 2011 to develop a health care cost management strategy. The strategy shall include but not be restricted to the following steps:

- Step 1: Identify populations health risk factors that are medical cost drivers through data mining and predictive modeling
- Step 2: Identify the key focal point related to gaps in care, disease prevalence, life-style factors, and illness severity that most benefit from medical management
- Step 3: Develop an action plan and key objectives to address the medical plan cost drivers
- Step 4: Adopt programs (i.e. chronic condition management, case management, care coordination, wellness) to achieve strategic objectives
- Step 5: Communicate the objectives and strategy to plan participants
- Step 6: Measure program progress against established metrics of each objective

(b) The healthcare care cost strategy shall be designed to impact the medical cost drivers to lower medical trend and plan costs by:

1. Reducing health risk factors prevalent in the Montgomery County employee population
2. Improving treatment compliance of employees with chronic conditions
3. Improving medication adherence of employees with chronic conditions
4. Decreasing the prevalence of obesity in the population
5. Increasing the number of people exercising and eating nutritious meals.
6. Exploring more cost efficient prescription, dental, and vision programs

* * *

ARTICLE 29 - LABOR MANAGEMENT RELATIONS COMMITTEE (LMRC)

* * *

29.9 The parties agree to create a subcommittee of the County-wide LMRC, consisting of three (3) members appointed by management and three (3) members appointed by the Union, to look at leave issues. This subcommittee shall report back to the main County-wide LMRC, no later than November 1, 2011, on the following topics:

- Approval time for annual leave.
- Use of doctor's note to excuse absences when leave abuse is suspected.
- Consideration of unscheduled absences more than 30 days old when misuse/abuse is suspected.
- A stress management program to possibly involve administrative leave for bargaining unit members involved in traumatic work-related incidents.

* * *

ARTICLE 31 - MAINTENANCE OF STANDARDS

All members of the bargaining unit retain the following benefits and conditions, as well as like benefits and conditions previously in effect between the parties, as set forth below:

- (a) employee tuition assistance;
- [(b) call back pay;]
- [c] (b) disposition of educational and special pay;
- [d] (c) use of County vehicles;
- [e] (d) Sheriffs' law enforcement equipment issuance;
- [f] (e) departmental uniform policy;
- [g] (f) Transit Services run-pick procedures;
- [h] (g) tools and equipment provided to DPWT trades and cleaning employees;
- [i] (h) Union use of interdepartmental mail system;
- [j] (i) Administrative Procedure No. 1-5, *Local Travel Guidelines*, personal mileage reimbursement;
- [k] (j) call-back pay, as provided in the Montgomery County Personnel Regulations, as amended August 25, 1988;
- [l] (k) deferred compensation; and
- [m] (l) Wellness Program, subject to budget limitations.

ARTICLE 32 - TOOLS AND UNIFORMS

* * *

32.5 Uniforms For Employees

* * *

(d) Safety Apparel/Equipment

* * *

- (3) The County shall contribute up to [\$365.00 during FY08] \$121.67 in each fiscal year of the agreement toward the purchase of safety shoes by employees, as required or recommended by management. From the date of receipt, this is the total amount an employee shall receive for a 3-year period. To receive this reimbursement the employee must: present a valid receipt for the purchase of the shoes to his or her assigned Department or Agency; the shoes must fit the job assignment to the bargaining unit employee as determined by Risk Management, and the shoes must comply with American National Standard Institute (ANSI) safety standard ANSI: Z41-1983, or subsequently adopted appropriate ANSI standard.

* * *

ARTICLE 34 - SAFETY AND HEALTH

* * *

[34.2 Safety and Health Committee

- (a) The Union and the County mutually agree that employees' safety is of primary concern and that every effort shall be made to promote safe equipment, safe work habits, and safe working conditions. In order to reduce the incidence of duty-incurred injury in County service, the County and the Union shall establish a Safety Committee consisting of the following:
 - (1) 5 representatives of the Union; and
 - (2) 5 representatives of management
- (b) The Union and the County shall select their representatives and each shall make such

selections known to the other in writing. The Committee shall select a chair and said position shall be rotated between the County and the Union on a yearly basis. The Committee shall meet at the call of the Chair to formulate such rules as it considers appropriate to its mission. Thereafter, the Committee will function in accordance with the rules. The Committee shall meet not less than once each month. Special meetings may be held at the call of the Chair or at the request of any member communicated to the Chairman. Members of the Committee attending such meetings or performing related activities at the direction of the Committee will not suffer loss of time or pay.

(c) A mutually agreed upon Committee will make periodic work area inspections. The Committee will review employee injury reports and recommend safety measures. The Committee shall have the authority to investigate specific safety problems and to make recommendations for their resolution to the employer. The Committee shall study and make recommendations concerning the following specific items and any other the Committee agrees to:

- (1) protection of unit employees and their property;
- (2) indoor air at County facilities;
- (3) employee cash handling and bank deposit procedures;
- (4) abusive and hostile public;
- (5) physical security of facilities; and
- (6) adequacy of security force and protocols.]

[34.3] 34.2

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[34.4] 34.3

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[34.5] 34.4

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[34.6] 34.5

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[34.7] 34.6

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[34.8] 34.7

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[34.9] 34.8

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[34.10] 34.9

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[34.11] 34.10

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[34.12] 34.11

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[34.13] 34.12

* * *

[34.14] 34.13 Training

* * *

(c) The County shall provide such training programs as are determined by the parties to be reasonably necessary to assure that each bargaining unit member, in connection with his respective job, is adequately trained in the precautions and procedures required for safety in maintenance, handling and use of facilities, equipment, machinery, chemicals and apparatus.

[34.15] 34.14

* * *

[34.16] 34.15 Procedures for Use of Respiratory Protection Equipment

* * *

(k) The County shall maintain certification of respiratory equipment as required by law.

* * *

[34.17] 34.16 Driver's License Program

All employees who must, as a part of the employee's duties, routinely operate a County-owned/leased vehicle in the course of County employment must maintain a valid driver's license, provide the Employer with notice of their driver's license number and [shall] must immediately notify the Employer of any suspension or revocation of their driver's license and in accordance with AP 1-4. This provision does not supersede or invalidate any existing driving event or record reporting requirement authorized by law, regulation, administrative procedure, or departmental procedure.

* * *

[34.18] 34.17

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[34.19] 34.18

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[34.20] 34.19 The County shall furnish to the Union annually (a) a copy of OSHA Form 300, Log of Work-Related Injuries and Illnesses, with the names of the employees deleted, and (b) a copy of OSHA form 300A, Summary of Work-Related Injuries and Illnesses. These forms combine work related injuries sustained by bargaining and non-bargaining unit employees.

The parties agree to create a joint labor-management study committee consisting of three (3) representatives appointed by management and three (3) representatives appointed by the Union to study possible trends surrounding on-the-job accidents. This committee will report back to the parties no later than June 30, 2012.

[34.21] 34.20

* * *

34.21 Home Visits/Investigations

A bargaining unit member shall not be required to conduct home visits, transport clients, or perform investigative activities alone or unassisted when, based upon the reasonable judgment of the bargaining unit member, there is a known or perceived dangerous situation. If an employee is concerned about a safety problem he or she shall ask for assistance from their supervisor who will reasonably determine what assistance is needed, and if necessary make available a second employee or facilitate a police escort.

34.22 Mold/Mildew Abatement

When mold becomes apparent in any bargaining unit work environment, the County shall take corrective action to eliminate the mold in a timely manner.

* * *

ARTICLE 38 - NON-DISCRIMINATION

38.1 All terms and conditions of employment contained in this Agreement shall be applied to all employees without discrimination on the basis of race, color, sex, marital status, religion, union or political affiliation, country of origin, age, sexual orientation, disability, or genetic information. The terms of this agreement shall also apply to sexual harassment.

* * *

[38.3] If an alleged violation of this Article is pursued by a grievant in any statutory forum such as a court or administrative agency, the violation shall not be subject of a grievance under this Agreement.

38.4 Sexual harassment is a form of sex discrimination and is therefore included in the provisions of Section 38.1 above. Sexual harassment is defined as unwelcome sexual advances, requests for sexual

favours, and other verbal or physical conduct of a sexual nature when:

- (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.]

ARTICLE 39 - COMMUNICATION

39.1 [Copies of Employer Correspondence] Notice of Work Rule Change

- (a) The Union must be given no less than 30 [business] days notice of work rule changes. Work rules are defined as general directives, policy statements, and procedures made or issued by the Employer that govern or regulate the conduct and performance of employees and/or impact the hours or working conditions of unit members. The Union shall have the opportunity during that 30-day period to bargain over any negotiable work rule changes. Negotiations shall not delay the implementation of any work rule change. Work rule changes must not modify the terms of the collective bargaining agreement unless jointly agreed upon by the parties. The Union may request a meeting with the County concerning the subject work rule change within 10 business days of receiving notice.

* * *

ARTICLE 41 - RETIREMENT

* * *

41.10 The County shall not make the employer retirement contribution for bargaining unit members in groups A, E, and H of the Montgomery County Retirement System, during the July 1, 2011- June 30, 2012 Fiscal Year. Groups A, E, and H bargaining unit members would not earn service credit during the July 1, 2011- July 30, 2012 Fiscal Year. However, employees in groups A, E, and H would continue to contribute to the ERS during that period.

* * *

ARTICLE 42 - DURATION

This contract embodies the whole agreement of the parties and may not be amended during its term except by mutual written agreement. This Agreement shall become effective July 1, [2010] 2011.

and terminate June 30, [2011] 2012. Renegotiation of this Agreement shall begin no later than November 1, [2010] 2011, and shall proceed pursuant to the County Collective Bargaining Law.

* * *

ARTICLE 44 - NON-PUBLIC SAFETY RETIREMENT PLANS

* * *

44.2 Contributions

* * *

Bargaining unit members participating in the RSP would be credited with the County contribution of 6% instead of 8% of employee's regular earnings for the July 1, 2011- June 30, 2012 Fiscal Year. However, RSP participants shall continue to pay their full contribution rate during the same period.

* * *

44.6 Severance Pay Plan

* * *

(d) Participants in the GRIP shall be eligible for the above referenced severance benefits.

44.7 Guaranteed Retirement Income Plan

* * *

Bargaining unit members in the GRIP would be credited with the County contribution of 6% instead of 8% of employee's regular earnings for the July 1, 2011- June 30, 2012 period. However, GRIP members would continue to contribute their full contribution rate during the same period.

* * *

44.9 Retirement Plan Liability Reductions

Beginning no later than August 1, 2011 the parties shall jointly analyze the Employees' Retirement System, RSP, and GRIP to determine what alternative funding strategies and plan design changes may be adopted to reduce the plan's unfunded liability.

Should the parties not reach agreement on any identified alternatives, then such alternatives shall become subjects of bargaining during negotiations that will beginning November 1, 2011.

* * *

ARTICLE 52 - INQUIRIES INTO ASSERTED ABUSIVE CONDUCT

If the Union believes that a supervisory employee has engaged in abusive or intimidating behavior toward a unit member, the Union may file a confidential complaint with the Office of Human Resources with as much information as possible. The Office of Human Resources will conduct a confidential investigation of the complaint, to be completed within 90 days. OHR will then provide a confidential report of its findings and any recommendations for corrective action to the department head and the CAO.

* * *

APPENDIX II

OPT Unit - DEPARTMENT OF HEALTH AND HUMAN SERVICES

- [(a) A bargaining unit member shall not be required to conduct home visits, transport clients, or perform investigative activities alone or unassisted when, based upon the reasonable judgment of the bargaining unit member, there is a known or perceived dangerous situation. If an employee is concerned about a safety problem he or she shall ask for assistance from their supervisor who will reasonably determine what assistance is needed, and if necessary make available a second employee or facilitate a police escort.. The County agrees to ensure that a sufficient number of cellular telephones will be made available to the ACT Team and Child Welfare bargaining unit employees who have duties consistent with Appendix II.]

General Issues

- [(b)] (a) The County shall purchase safe needles for use by Nurses and Technicians and maintain a needle stick and sharp instrument protection policy.
- [(c)] (b) The Department shall continue to adhere to the Maryland Nurse Practice Act.
- [(d) Each school health room shall have appropriate medical supplies and equipment as determined by the Nurse Manager in consultation with the health room staff.]
- [(e)] (c) Aging and Disabilities: Prior to a person on-call being sent into the field, the supervisor shall review the need to dispatch a Nurse or Social Worker, or other employee.
- [(f) The County shall work with the Union to establish a savings plan through the Credit Union to allow school based and other ten-month employees to have an income stream during the summer months.]

- [(g) School based health staff will be placed on administrative leave when all MCPS schools are closed due to inclement weather. If individual schools are closed, health room staff are to contact their Nurse Administrator/ Manager directly or through the school health services office for an alternate assignment. If an alternative assignment is not available, the unit member shall be placed on administrative leave. Year round staff are expected to remain in work status when schools are closed except that unit members may request annual leave in accordance with Article 14, Section 14.6.]
- [(h) The County will continue to install panic buttons in group rooms, to be completed by June 1, 2008. The Union will do a walkthrough with the Department to identify rooms.]
- [(i) (d) HHS and the Union agree that employees who work beyond the regular work day must have prior supervisory approval and must be compensated in compliance with Article 5 of the Agreement. The subject matter of whether overtime is needed within the Department will be forwarded to the Countywide LMRC for consideration.

School Health Services

- (a) Each school health room shall have appropriate medical supplies and equipment as determined by the Nurse Manager in consultation with the health room staff.
- (b) School based health staff will be placed on administrative leave when all MCPS schools are closed due to inclement weather. If individual schools are closed, health room staff are to contact their Nurse Administrator/ Manager directly or through the school health services office for an alternate assignment. If an alternative assignment is not available, the unit member shall be placed on administrative leave. Year round staff are expected to remain in work status when schools are closed except that unit members may request annual leave in accordance with Article 14, Section 14.6.
- [(j) The County and the Union agree that this Agreement does not provide workload and caseload assignment standards. This provision does, however, represent the parties' best efforts to assess the staffing needs of DHHS and work in partnership to improve the quality of services wherever possible.

To that end, the parties agree to contract the services of a third party consultant who is experienced in the field of health and human services to evaluate the caseloads /workloads of each professional job classification to determine whether caseloads/workloads are in compliance with professional standards and-or state/ federal guidelines. Should the consultant determine that additional staff is needed to better manage caseloads/workloads the parties shall negotiate over such recommendation.]
- [(k) Personal safety and security training seminars will be offered to all employees assigned to the site. Signs will be posted in the parking lot that will state that the lot is monitored

by security patrols. Security will continue to provide safety escorts to employees upon request. (401 Hungerford Drive)]

[(l)] Personal safety and security training seminars will be offered to all employees assigned to the site. Signs will be posted in the parking lot that will state that the lot is monitored by security patrols. Security will continue to provide safety escorts to employees upon request. (1301 Piccard Drive)]

[(m)](c) School/Public Health: Administration of medication may only be delegated by a nurse when limited to medication by subcutaneous inject if the nurse has calculated the dose.

[(n)] Nurses shall have access to a nurse manager and/or other medical professional for consultation on health/medical matters.]

[(o)] 1301 Piccard

1. The following items will be referred to the LMRC:
 - Employee parking;
 - Vehicles; and
 - Ergonomic chairs at all workstations in the crisis center.
2. Risk Management will make diligent efforts complete an air quality assessment in a timely manner. If the assessment will not be completed by September 1, 2008, the County will notify the Union.
3. The County agrees to complete the installation of card readers at the entry way to the offices by July 1, 2008.
4. An intercom, door release and swipe card system will be installed at the reception area in Suite 1200, Administrative offices, and with a bigger window in the door.]

[(p)] 1335 Piccard

1. Privacy partitions will be installed where requested.]

[(q)] 401 Hungerford

1. The following items will be referred to the health and safety subcommittee of the LMRC:
 - Installation of security cameras in the parking garage and establishment of a monitoring desk.

2. Risk Management will make diligent efforts complete an air quality assessment in a timely manner. If the assessment will not be completed by September 1, 2008, the County will notify the Union.
3. The following item will be referred to the LMRC:
 - Vehicles.
 - Install security cameras in garage at 401 Hungerford, with monitors at the security desk at 401 Hungerford and the Security Command Center.
 - Remove all damaged and moldy carpeting on 7th floor lobby and hallways.
 - Install traffic mirrors in parking garage.]

[(r) 7300 Calhoun

1. The facility will repair all ceiling tiles.
2. The following items will be referred to the LMRC:
 - Employee parking;
 - Vehicles.
3. The following items will be referred to the safety and health subcommittee of the LMRC:
 - Provide evening security;
 - Install speed bumps in walk areas surrounding building.
4. Risk Management will make diligent efforts complete an air quality assessment in a timely manner. If the assessment will not be completed by September 1, 2008, the County will notify the Union. The results will be forwarded to the LMRC.]

[(s) 8818 Georgia Ave.

1. The following item will be referred to the LMRC:
 - Employee parking.
2. The Department agrees that a lock has been install on the door of the lunchroom.
3. Risk Management will make diligent efforts complete an air quality assessment in a timely manner. If the assessment will not be completed by September 1, 2008, the County will notify the Union.]

[(t) 255 Rockville Pike

1. The County agrees to provide documentation that the furniture is new.

2. The following items will be referred to the health and safety subcommittee of the LMRC:
 - Security.
 - Increase number and frequency of mobile security patrols.
3. Panic buttons will be installed in all group rooms by July 1, 2007.
4. Risk Management will make diligent efforts complete an air quality assessment and make any necessary enhancements in a timely manner. If the assessment will not be completed by September 1, 2008, the County will notify the Union. The results will be forwarded to the LMRC.
5. The following items will be referred to the Countywide LMRC:
 - Install security cameras in garage at 255 Rockville Pike, with monitors at the security desk at 255 Rockville Pike and the Security Command Center.]

[(u) UpCounty Regional Center

1. The following items will be referred to the safety and health subcommittee of the LMRC:
 - Enclose the front reception area of income support.
 - Create an additional Security Officer post on the 2nd floor and staff for all hours open to the public.
 - Provide AED equipment in all levels of the building.
2. The following items will be referred to the building maintenance subcommittee of the LMRC:
 - Disinfect interview rooms and lobby area on a daily basis;
 - Provide enhanced cleaning and security of employee bathroom;
 - Provide routine maintenance of workspace.
3. The County agrees to provide disinfecting products.
4. The following item will be referred to the LMRC:
 - Vehicles.
 - Employee parking.]

[(v) East County Regional Center

1. The following item will be referred to the safety and health subcommittee of the LMRC:
 - Establish and implement a security protocol to include permanent Security Officer for all hours facility open to public.

2. The following item will be referred to the LMRC:
 - Chairs]

[(w) Child Welfare Services

1. The Department is willing to provide laptops as necessary according to current practice.]

[(x) Dennis Ave

1. Risk Management will make diligent efforts complete an air quality assessment in a timely manner. If the assessment will not be completed by September 1, 2008, the County will notify the Union.
2. The Department has already provided cell phones and laptops for all unit members who do field work in accordance with current practice.
3. The following item will be referred to the LMRC:
 - Employee parking.
4. An emergency evacuation assessment will be conducted.]

[(y) 751 Twinbrook

1. Risk Management will make diligent efforts complete an air quality assessment in a timely manner. If the assessment will not be completed by September 1, 2008, the County will notify the Union.
2. An operable client elevator will be provided.
3. A Security Office position has been requested for FY08.
4. The following item will be referred to the building and maintenance subcommittee of the LMRC:
 - Improve parking lot lighting.]

[(z) School Health

1. Computer program training will be provided to School Health unit members through the Office of Human Resources.
2. The following items will be referred to the LMRC:
 - Furniture;

- Increased number of special needs students;
- Increase number of School Health nurses;
- Budgets (work with MCPS);
- Recruitment and retention;
- Timely notification of assignments.

3. An ongoing School Health in-service training curriculum shall be established no later than the beginning of the 2007 school year.]

[4.](d) No school health bargaining unit member will work off the clock unless he/she has prior approval in which case must be compensated in accordance with the collective bargaining agreement. The only exception to necessary prior approval is in the event a student or staff member is injured or ill, the unit member is encouraged to render necessary assistance beyond the regularly scheduled work hours. The unit member shall advise the nurse administrator of such additional work in accordance with the school health guidelines. The unit member shall be compensated in accordance with the collective bargaining agreement.

(e) Provide year-end guidelines to school health room aides regarding the process for requesting assistance to complete year end duties.

(f) School Health Services management will add selection boxes, with a drop down menu, to identify up to three preferred assignments; and will publicize the updated assignments list a minimum of three times each school year (i.e. September, December, and March).

[5. The County agrees to clarify assignment process for all school health staff and provide timely notification of assignments.

6. A separate departmental LMRC will be established for school health to deal with outstanding issues.]

[(aa) Miscellaneous

1. The following item will be referred to the safety and health subcommittee of the LMRC:

- Provide Security Officers on a full-time basis in work areas serving high risk populations.

2. The following items will be referred to the building and maintenance subcommittee of the LMRC:

- Conduct mold abatement at CRC;
- Stabilize temperature control at CRC;

3. Additional digital cameras will be provided where needed.
4. The Employer shall take steps to assure that all bargaining unit members receive a copy of the Disruptive Behavior Act.
5. The following items will be referred to the Countywide LMRC:
 - Provide panic alarms in all rooms/offices where employees provide direct service at 2424 Reddie Dr.]

APPENDIX III

SLT Unit - DEPARTMENT OF POLICE, CROSSING GUARDS & FORENSIC SPECIALISTS

* * *

(k) Forensics

1. Use of Vehicles while On-Call Forensic Specialists who live in the County and those who live out of the County but near the County border (within 15 miles), will be allowed “to and from” use of a County vehicle while in an on-call status. In exchange for the use of a “to and from” vehicle while on-call, Forensic Specialists will be expected to respond to calls for service.
2. The County will issue traffic/safety vests to all members to be worn when working crime scenes in roadways.
3. Employees will be provided with ballistic/body armor to be worn when working in dangerous and/or potentially dangerous environments. These will be for mandatory use at the direction of any supervisor. The ballistic/body armor will be funded via LMRC monies.
4. The County will provide voluntary self defense classes.
5. The following items will be referred to the LMRC
 - Studies on safety and cleanliness of building (i.e. vermin inside and outside and ceiling capability during rainstorms).
 - Implement a pilot 4 day/10 hour work schedule.

* * *

(n) Police Service Aides

1. The following items will be referred to the health and safety subcommittee of the LMRC:

- All front doors to lobby shall be locked at night. Such doors shall be equipped with an entry buzzer controlled by the front lobby;
- Issue new headsets for all unit members assigned to district stations.
- Improve security at all stations by having SWAT conduct an assessment and implement accordingly.

* * *

(o) ECC

* * *

4. The following item will be referred to the LMRC:

* * *

- Fence perimeter
- Improved parking lot lighting
- Develop security protocols

* * *

9. ECC shall not require short notice mandatory overtime of [a dispatcher assigned to the #3 shift (4:00 pm – 12:00 am)] an employee who is scheduled for pre-approved leave (vacation) the following [work] calendar day unless exigent circumstances require that all members of the shift be held over. If the [dispatcher] employee is excused from working overtime by virtue of leave approval the following work day, the employee will stay at the top of the mandatory list upon return to work. This provision shall not apply to prescheduled mandatory overtime.

* * *

(t) Public Safety Training Academy

1. The following item will be referred to the Countywide LMRC:

- Adequate noise barriers in all unit work stations shall be installed no later than December 1, 2010.
- LMRC will conduct studies on hazardous working conditions (air quality, hearing loss, etc...)

(u) Animal Services

1. Employees are to receive 3 hours of court time (for court hearings in District or Circuit court) when scheduled for court on a regular day off or during off-duty hours.

2. FTO Pay: All employees who perform training, shall receive training pay as described under 5.23 of the MCGEO contract (\$3/hour).
3. The following items will be referred to the LMRC:
 - Callback pay (define when call back pay starts and how long employees have to report in once called back)

(v) Homeland Security

1. Security Section: (1) The County agrees that more training is necessary for Security Officers. In order to further the professionalism of security officers and to train officers in best security practices, the County will provide all officers with 40 hours of initial training, followed by an additional 8 hours of annual in-service training. Union will have input in course development. (2) Security Officers will be issued flashlights. (3) Security Officers will be issued and required to wear lightweight undergarment body armor. Appropriate disciplinary action may result for failure to wear body armor. (4) Security Officers will be issued OC Spray after they receive appropriate training/certification. The product must be carried while on duty. (5) Additional radios will be purchased to ensure that every officer is provided a radio while on duty.
2. Pursuant to the reopener, agreement additional radios will be purchased to ensure that every officer is provided a radio "while on duty."
3. Spotlights will be provided on all vehicles.
4. The following items will be referred to the LMRC with respect to areas under the control of Homeland Security, Security post at EOB, COB, and PSSC and referred to the Countywide LMRC with respect to other facilities not controlled by Homeland Security:
 - replace all chairs at security posts with ergonomically designed chairs;
 - replace current desks at security posts with ergonomically designed workstations;
 - provide regular cleaning of work areas;
 - install gates with locks on security area to restrict unauthorized personnel.
5. Department will establish a standard rotation every two (2) weeks subject to post requirements and to accommodate employee medical needs. Department Captain will review any written complaints by Union about favoritism in location assignment and will respond to the Union in writing.
6. County is moving forward with developing training curriculum with input from Union within time-frame of reopener agreement.
7. The parties agree there is a need to discuss the allegations of inappropriate behavior of

Lieutenants.

8. The department shall make every reasonable effort to provide notice to a Security Officer of a change in shift location twenty-four (24) hours prior to the beginning of the bargaining unit member's scheduled shift, provided the need for the shift location change is known by the Department 24 hours in advance, and shall communicate this notice of change to the officer's County e-mail address or phone number provided by the officer. If 24 hour notice cannot be provided, the officer will be notified at or near the time the need for a change in shift location arises.
9. Business cards will be issued.
10. The following item will be referred to the LMRC:
 - Issue cell phones to mobile patrols.
 - SUVs with security emblem.
 - Replace all chairs at security posts with ergonomically designed chairs.
 - Expand CCTU surveillance and security patrols and implement two officer patrols during hours of 5:00 p.m. and 6:00 a.m.
 - Implement a 4 day/10 hour work schedule.
 - Implement security plans for each building patrolled and conduct training on these plans (layouts, entrances, exits, etc...)
 - Two person response to all alarm calls during night time hours.
11. Sanitary wipes will be provided at each security post.
12. The County agrees that the current rain jacket issued to Security Officers will be replaced at time of regular replacement by a rain jacket with a hood.
13. The County will provide standard first aid kits for mobile patrols.
14. The County will provide a cell phone for sign out and use by a Field Supervisor.
15. The County will stitch Sergeant Chevrons onto Security Sergeants' jackets.

APPENDIX IV

OPT Unit - DEPARTMENT OF CORRECTIONS AND REHABILITATION

- (a) The parties shall establish a Labor Management Relations Committee (LMRC). LMRC agenda items will include:

* * *

Enforcement of policies consistently throughout DOCR

Visiting police officers ability to carry guns

Review assignments which should be designated as a "two person post"

Non-toxic cleaning products and floor stripping agents (regular reviews will be conducted and

Risk Management may be requested to conduct chemical hazard testing)

Install secured, fenced parking area

* * *

(p) MCCF

1. The following items are referred to the LMRC:

* * *

- Discuss: Therapists and psychiatric nurses assigned to MCCF will be placed on a rotating stand by status based on seniority to perform unscheduled work (receive/return phone calls, perform evaluations by phone and/or report to work) and will receive stand by compensation.

* * *

(r) PRC

1. The following items are referred to the LMRC:

- Provide additional employee parking.
- Issue body alarms to all unit members
- Create additional employee parking
- Change locations of parking lot cameras
- If appropriate, mandate a 6 week state academy training

* * *

3. The County will offer a FTO program and shall provide training pay as described under 5.23 of the MCGEO contract.

4. All central staff shall be issued handcuffs. It is mandatory that central staff carry the handcuffs at all times while working.

* * *

(dd) All broken medical equipment shall be serviced or replaced as needed (the below listed items are now being examined to determine if repairs are necessary):

- 6 metal biohazard trash cans with step to open lid (MCDC/MCCF)

- Call bell system (MCCF)
- 1 Welch/Allen portable vital sign machine on wheels (MCDC/MCCF)
- 3 portable digital blood pressure machines
- 4 electronic thermometers
- 6 stethoscopes
- 1 pulse ox meter
- Sphygmomanometer wall unit with cuffs

(ee) The clocks of record at MCCF and MCDC will be the clock at key check and the clock in the roll call room, respectively.

(ff) The County will provide mandatory self defense training to all DOCR staff. If an employee does not attend this mandatory training, he/she may be subject to discipline.

(gg) The following items will be referred to LMRC for MCDC/MCCF:

- Cut trees along fence at MCDC fence line
- Special study group to review a consistent promotional process
- Allowing a grace period for late slips
- CPU-15 Special Police Officer Committee

* * *

APPENDIX V

OPT/SLT Units - DEPARTMENT OF LIQUOR CONTROL

* * *

(l) The following items are referred to the LMRC:

* * *

7. Uniform safety standards:

Increase inspections:

Equipment: safety glasses, back braces, etc...

8. The parties shall discuss an incentive program to reduce sick leave usage and workplace injuries.

* * *

Appendix IX

Performance Planning and Evaluation Procedures for Bargaining Unit Employees

* * *

(2) Definitions.

- (a) *Coaching*: [The ongoing process used by a supervisor to help an employee recognize the quality of the employee's work, identify opportunities for improvement, and provide guidance and direction to the employee to maximize the employee's knowledge, skills, and abilities.] Coaching is a non-disciplinary, supervision tool that utilizes interactive communication between a supervisor and an employee with the intent to have a positive influence on the employee and the department. The goal of coaching is to enhance the employee's motivation, performance, awareness, and professional development. Coaching may be a one time event or a process that occurs over time. Coaching may be used by a supervisor to recognize the quality of the employee's work, identify opportunities for improvement, and provide guidance and direction to the employee to maximize the employee's knowledge, skills and abilities.

* * *

APPENDIX X
DEPARTMENT OF PERMITTING SERVICES

* * *

- (b) The following items will be referred to the LMRC:
- replace current vehicles used by unit members with 4X4 vehicles equipped with appropriate equipment and supplies.
 - Job related training will continue to be provided.
 - Foreign language training is available through tuition assistance program.
 - Eliminate Customer Service Division and return bargaining unit workers to land development or building construction as appropriate. (As an alternative, a general proposal for management to share customer input with Union and jointly develop agency improvements to address customer suggestions)
 - Annually, within one month of the beginning of the fiscal year, provide field inspectors with three baseball caps, one insulated winter cap (with tie-down ear muffs), one pair of safety boots (with nail proof soles), one set of insulated overalls (if the inspector requests), and 3 long and 3 short-sleeved shirts with DPS logo. If DPS 'enterprise' funding is insufficient, then transfer general funds to DPS for purchase.
 - Annually, three months prior to December 31st, provide hard copy calendars to bargaining unit employees. If DPS 'enterprise' funding is insufficient, then transfer general funds to DPS for purchase.
 - Immediately provide field inspectors 'real time' access to Hansen data base in the field, with record update or add times through Network Connect and Windows Secure Application Manager that are as fast as was available through DPS10 Direct Access, i.e. within one second of hitting the update button.

- Immediately create “redundancy” capability such that field inspectors do not lose data entered into new or modified, but unsaved, Hansen records when the wireless connection is temporarily lost (as was the case with DPS10 Direct Access).
- When requested by the inspector, immediately provide multiple replacement inkjet cartridges to field inspectors for use in printers to print reports in the field.
- Within three months develop and implement an automated permit renewal notification system. Hansen to generate permit renewal letters 45 days prior to permit expiration, via email or letter to the permit holder, with cc to the appropriate DPS field inspector.

* * *

APPENDIX XI

Revised Attendance Policy, Effective: [7/1/07] July 1, 2011

- (a) To establish an attendance policy for all bargaining unit members in the Division of Transit Services/DPWT, not including administrative staff, that encourages attendance, assures maintenance of accurate attendance records, provides for fair and equitable implementation, and promotes a cost effective and efficient working environment.
- (b) IMPLEMENTATION Employee attendance records, under this revised procedure, will be established effective 7/1/06 for employees not in the disciplinary track. Employees in the disciplinary track as of 7/1/06 shall maintain current point balances. Any pending disciplinary action initiated under any previous attendance policies will not be affected by this change. All disciplinary actions initiated for violations occurring after the effective date of this policy shall be subject to the procedures established herein.
- (c) APPLICATION Employees who fall into a pattern of unscheduled absences, namely 6 incidents in a 6-month period will be subject to this attendance policy. Absences are reviewed and applicable during a 6-month period which will be defined as July 1 through December 31, and January 1 through June 30. Prior to a unit member being placed into the progressive disciplinary track outlined below, they shall receive notice in accordance with Article 30 of this Agreement. Upon receipt of such notice, the Union may grieve the validity of the placement of the unit member into the disciplinary track, in accordance with Article 10 of this Agreement.

Once an employee receives such notice, the employee will be ineligible for and shall not receive voluntary overtime until such time as the employee is removed from the program.

- (d) GENERAL
- (1) In recognition of the importance of a good attendance record and the impact of unscheduled absences upon these departments and their provision of public

services, this policy establishes guidelines and discipline for those held to these rigorous standards.

- (2) In implementing this policy, the County also acknowledges its responsibility under Article 14.6 of this Agreement to make every effort to give each employee the opportunity to use annual leave earned. The County further acknowledges the right of employees to use accrued sick leave for the reasons stated in Article 15.1 of the Agreement and in accordance with Article 15.6, consistent with the requirements of this policy.
- (3) Employees who fall into a pattern of unscheduled absences as defined above, will be subject to progressive discipline, as outlined herein.

(e) DEFINITIONS

- (1) **Absence:** Absence is any period of time when an employee is regularly scheduled to work, has volunteered to work overtime pursuant to Section 5.9(h)(1) of the agreement, or has been assigned to work overtime pursuant to Section 5.9(h)(2), and the employee is not present at the "place of report" where the work is to be done, at report time. For this procedure, "absence" includes any increment of time from one minute to many consecutive workdays. However, an absence of 15 minutes or less will require two such instances to be considered an absence. However, absences of several days for the same ailment (e.g. flu) that occur on consecutive days will equate to one chargeable absence for the purposes of this policy. For example, in the case of a 3-day absence for one illness only one absence will be charged. However, an absence without leave (AWOL), as defined in (e)(4) below, will be considered as two incidents since it involves both an unscheduled absence as well as a failure to provide notification.
- (2) **Absence - Chargeable:** A chargeable absence is any non-approved absence. As a general rule, absences not previously approved are chargeable. However, an absence that is the direct result of "extraordinary circumstances" may not be chargeable. "Extraordinary circumstances" is defined as an event that is emergency in nature, a spontaneous, ad hoc, non-routine incident impacting two or more employees, which occurs through no fault of the employee, and is not personal in nature to an employee. The employee or the Union has the burden of demonstrating that the event meets the definition of "extraordinary circumstances" and that good cause exists for excusing and not charging the employee with an absence.
- (3) **Absence - Non-chargeable:** Non-chargeable absences are those absences that are pre-approved. Prior approval means the employee has asked for and received approval before the end of his/her preceding regularly assigned work

shift except where the employee becomes sick or ill during his/her regularly assigned work shift. All types of absences listed below require prior approval from your supervisor in order to be non-chargeable. The following absences, approved in advance, are non-chargeable:

- (A) scheduled days off/authorized holidays that the employee has not been scheduled to work;
- (B) vacations - previously approved "blocks" of annual leave, generally 40 hours or more;
- (C) jury duty;
- (D) bereavement leave as provided by applicable contract provisions or personnel policy;
- (E) Union leave requested and approved in accordance under Article 36;
- (F) leave of absence (pre-approved leave without pay);
- (G) pre-approved annual leave;
- (H) job related injury/illness, in accordance with Article 17;
- (I) required court appearances, in accordance with Article 19;
- (J) approved FMLA leave (personal or family serious or chronic illness) in accordance with Article 45, either pre-approved or documented by medical certification after the fact;
- (K) military leave (orders must be supplied);
- (L) sick leave;
- (M) family sick leave;
- (N) disciplinary actions;
- (O) administrative leave;
- (P) compensatory time; and
- (Q) personal leave day

(4) Absence Without Official Leave (AWOL)

(A) Employees are considered absent without leave whenever they are absent for any portion of the scheduled workday, and fail to notify the designated supervisor and obtain approval for the absence.

(B) Employees are considered absent without leave whenever they are absent, but were given authorization to be absent on the strength of representations which subsequently prove to be false. The employee's timesheet will be corrected to reflect the AWOL and time charged.

(5) Notification of Leave Approval. Whenever possible, employees will receive notice of approved or disapproved leave requests within 5 business days of receipt of the request.

(f) ATTENDANCE GUIDELINES

(1) All employees will request leave from their immediate supervisor as far in advance as possible but not later than the end of their preceding regularly assigned work shift. Supervisors will approve or disapprove leave based on operating requirements. Vacation picks/schedules based on seniority will be prepared annually.

(2) In the event of an absence related to personal illness or family sick leave, Transit employees must notify their supervisor at least 60 minutes prior to their scheduled report time. If an employee fails to provide this notification, he/she will be charged an additional one point.

(3) Any employee who falls into a pattern of unscheduled absences as defined above will accrue absence points in accordance with the provisions of Section (g) below. Under this system all chargeable absences from one minute to those of several days duration will accrue absence points in accordance with Section (g) of the guidelines. The relationship between absence points accrued during the most recent 12-month period, and discipline, is outlined in Section (h) of the guidelines.

(g) ABSENCE POINTS

(1) When an employee is absent, an entry will be made on a sign-in sheet that reflects the scheduled and actual report time of the employee and a reduced work voucher will be completed. A copy of this reduced work voucher will be provided to the employee.

- (2) Chargeable absences will be reviewed with each employee. A point value will be entered on the employee's attendance record in accordance with the schedule below:

Absence Point Schedule	Point Value
One minute to 15 minutes	½ point
16 minutes and less than 4 hours	1 point
4 hours and less than 8 hours	2 points
8 or more hours	3 points
AWOL less than 2 hours	4 points per occurrence
AWOL greater than 2 hours	6 points per occurrence

- (3) There shall be no multiple application of points for a single occurrence, except for a failure to provide notification.
- (4) Absences of several days for the same ailment (e.g. flu) that occur on consecutive days will equate to one chargeable absence for the purposes of this policy. This is the only situation in which a doctor's verification will excuse an absence (e.g. in the case of a 3-day absence for one illness accompanied by a doctor's verification, only one absence will be charged).

(h) MONITORING AND ENFORCEMENT

- (1) Supervisors will maintain records and monitor their employees' adherence to this policy.
- (2) Once an employee becomes subject to this policy, the employee's absence points will accumulate for one year (the "attendance monitoring year") from the date that the employee becomes subject to this policy.
- (3) Employees will be coached, counseled or disciplined based upon these guidelines whenever the number of points meets or exceeds the schedule below:

6 points	=	oral admonishment
9 points	=	written reprimand, advising employee that further unapproved absence will result in suspension and that additional, unscheduled, overtime may be restricted.
12 points	=	one-day suspension or 5 percent reduction in pay for 2 pay periods.
18 points	=	three-day suspension or 5 percent reduction in pay for 6 pay periods.
21 points	=	five-day suspension or 5 percent reduction in pay for 10 pay periods.

24 points = dismissal

- (4) All points will be removed from an employee's attendance record at the end of each attendance-monitoring year, unless an employee reaches the one-day suspension level of disciplinary action under this policy. If the employee receives a one-day suspension within the year, then the employee's existing points will be carried over into a second attendance-monitoring year. Such carried-over points may be used as the basis for progressive discipline.
- (5) If the employee does not incur any further discipline under this policy within any 6-month period within the second attendance-monitoring year, his/her point level will return to zero. However, the employee remains subject to the monitoring program. In no event will points be carried over for more than a second attendance-monitoring year.
- (6) Furthermore, if the employee does not incur any unscheduled absences within any 6-month period while his/her attendance is being monitored under this program, the employee will be removed from the program.

(i) Incentives

- (1) Employees who have less than two unscheduled absences in a 6-month period will be eligible for incentive bonuses.
 - (A) A six-month period will be defined as July 1 through December 31, and January 1 through June 30.
 - (B) A full-time employee who has only one unscheduled absence in a 6-month period is eligible for a \$225 attendance bonus. Effective July 1, 2008, A full-time employee who has only one unscheduled absence in a 6 month period is eligible for a \$300 attendance bonus. Effective July 1, 2009, a full-time employee who has only one unscheduled absence in a 6-month period is eligible for a \$375 attendance bonus.
 - (C) A full-time employee with no unscheduled absences in a 6-month period is eligible for a \$425 attendance bonus. Effective July 1, 2008, a full-time employee who has no unscheduled absences in a 6 month period is eligible for a \$500 attendance bonus. Effective July 1, 2009, A full-time employee who has no unscheduled absences in a 6-month period is eligible for a \$575 attendance bonus.
 - (D) A part-time employee who has only one unscheduled absence in a 6-month period is eligible for a \$125 attendance bonus. Effective July 1, 2008, a part-time employee who has only one unscheduled absence in a

6 month period is eligible for a \$200 attendance bonus. Effective July 1, 2009, a part-time employee who has only one unscheduled absence in a 6-month period is eligible for a \$275 attendance bonus.

- (E) A part-time employee with no unscheduled absences in a 6-month period is eligible for a \$200 attendance bonus. Effective July 1, 2008, a part-time employee who has no unscheduled absences in a 6 month period is eligible for a \$275 attendance bonus. Effective July 1, 2009, a part-time employee who has no unscheduled absences in a 6-month period is eligible for a \$350 attendance bonus.
- (F) In order to receive an attendance bonus a full-time employee must have worked at least 800 hours in that period, and a part-time employee must have worked at least 400 hours in that period. Worked hours for purposes of eligibility for this Incentive attendance bonus is defined as hours actually worked rather than hours in pay status.

(j) These revisions to the Attendance policy shall become effective July 1, 2007.]

An Operator, Transit Coordinator or Motor Pool Attendant who accumulates twenty (20) or more points will be subject to progressive discipline as follows:

- Tier 1: One day suspension
- Tier 2: Three day suspension
- Tier 3: Five day suspension
- Tier 4: Dismissal

The imposition of the steps in progressive discipline will reduce the employee's point by ten points. If the employee clears any remaining points following the imposition of disciplinary action and has no other attendance related discipline for the subsequent 12 Months, the employee's discipline will reset at "Tier 1". If the employee is unable to clear the remaining ten points before the next disciplinary incident, the employee will be subject to the next Tier in the progression of disciplinary action (Tier 2-3 and dismissal). Employees may waive their right to ADR for Tier #1 and/or Tier #2.

Incidents of Non-Attendance and Points

- Any unscheduled absence of less than four hours (3 points)
- Any unscheduled absence of four hours or more (7 points)
- Any unscheduled absence of a second half of a split (5 points)

Call in sick has a maximum of three days, on the fourth day points will be assessed according to the schedule above. On the Fourth Day and thereafter, the employee will be required to call in daily; otherwise the unscheduled absence will be considered AWOL. Any call in sick (2 points)

“Extraordinary Circumstances”: Points for absences that result from a documented event and/or “Act of God” that are emergency in nature, a spontaneous, ad hoc, non-routine, catastrophic incident may be excused if determined by the Chief of Operations. The Union has the burden of demonstrating that the event meets the definition of “extraordinary circumstances” and that good cause exists for excusing and not charging the employees with an absence.

Patterns of Unscheduled Absences

Pattern absences will be defined as follows:

Three (3) call outs on the same day of the week

Four (4) call outs before and/or after scheduled days off

Four (4) call outs on the weekend (Saturday and/or Sunday)

Three (3) call outs, which result in three consecutive days off

Three or more sick call outs which result in three days or more off

Patterns will be calculated on a calendar year.

Pattern violations will result in discipline of an additional four points for any pattern assessed.

Incentive Program

For every month in which the employee has no incident of non-attendance activity covered by the point system, the employee’s point total will be reduced by two (2) points. Beginning with the (6th) sixth consecutive month without such an incident and for each month thereafter the employees point total will be reduced by three (3) points. The point cannot be less than zero.

AWOL

The employee will be considered AWOL if he/she does not contact their supervisor or show for work by the scheduled end of their run and/o shift. The first AWOL workday will be assessed ten (10) points, skip a Tier for the second AWOL and immediate dismissal for the third AWOL in a rolling (24) twenty four month period. An employee shall be deemed to have abandoned his/her job upon being AWOL for (3) three consecutive days without communicating to Management.

1. Each employee will be notified in writing of all points assessed against him/her and will be counseled upon accumulating ten (10) or more points

Bonus Program

Employees that do not have any unscheduled absences in the calendar year will receive \$250.

[APPENDIX XII DEPARTMENT OF HOMELAND SECURITY

- (a) Security Section: (1) The County agrees that more training is necessary for Security Officers. In order to further the professionalism of security officers and to train officers

in best security practices, the County will provide all officers with 40 hours of initial training, followed by an additional 8 hours of annual in-service training. Union will have input in course development. (2) Security Officers will be issued flashlights. (3) Security Officers will be issued and required to wear lightweight undergarment body armor. Appropriate disciplinary action may result for failure to wear body armor. (4) Security Officers will be issued OC Spray after they receive appropriate training/certification. The product must be carried while on duty. (5) Additional radios will be purchased to ensure that every officer is provided a radio while on duty.

- (b) Pursuant to the reopener, agreement additional radios will be purchased to ensure that every officer is provided a radio "while on duty."
- (c) Spotlights will be provided on all vehicles.
- (d) The following items will be referred to the LMRC with respect to areas under the control of Homeland Security, Security post at EOB, COB, and PSSC and referred to the Countywide LMRC with respect to other facilities not controlled by Homeland Security:
 - replace all chairs at security posts with ergonomically designed chairs;
 - replace current desks at security posts with ergonomically designed workstations;
 - provide regular cleaning of work areas;
 - install gates with locks on security area to restrict unauthorized personnel.
- (e) Department will establish a standard rotation every two (2) weeks subject to post requirements and to accommodate employee medical needs. Department Captain will review any written complaints by Union about favoritism in location assignment and will respond to the Union in writing.
- (f) County is moving forward with developing training curriculum with input from Union within time-frame of reopener agreement.
- (g) The parties agree there is a need to discuss the allegations of inappropriate behavior of Lieutenants.
- (h) The department shall make every reasonable effort to provide notice to a Security Officer of a change in shift location twenty-four (24) hours prior to the beginning of the bargaining unit member's scheduled shift, provided the need for the shift location change is known by the Department 24 hours in advance, and shall communicate this notice of change to the officer's County e-mail address or phone number provided by the officer. If 24 hour notice cannot be provided, the officer will be notified at or near the time the need for a change in shift location arises.
- (i) Business cards will be issued.

- (j) The following item will be referred to the LMRC:
 - Issue cell phones to mobile patrols.
 - SUVs with security emblem.
 - Replace all chairs at security posts with ergonomically designed chairs.
 - Expand CCTU surveillance and security patrols and implement two officer patrols during hours of 5:00 p.m. and 6:00 a.m.
- (k) Sanitary wipes will be provided at each security post.
- (l) The County agrees that the current rain jacket issued to Security Officers will be replaced at time of regular replacement by a rain jacket with a hood.
- (m) The County will provide standard first aid kits for mobile patrols.]

**APPENDIX XIII
DEPARTMENT OF PUBLIC LIBRARIES**

- (a) The following items will be referred to the LMRC:

* * *

- Consult with MCGEO during the process of involuntary transfers.
- Management shall encourage and not obstruct employees' training needs to acquire CEUs for certification and/or career development.
- Staffing levels should reflect increases in workloads.
- Work-life issues should be addressed.

* * *

APPENDIX XX
DEPARTMENT OF GENERAL SERVICES – BUILDING ISSUES

- (a) All building maintenance related issues from all departmental appendices will be moved to this appendix.
- (b) The parties agree to jointly create a tool list and prioritize this list. Purchasing of tools is dependent on available funds.
- (c) Cleaning carpets and maintaining clean restrooms at HHS facilities shall be referred to the Building Maintenance subcommittee of the County-wide LMRC.
- (d) The following shall be referred to the County-wide LMRC:

- Sleeping accommodations, meals, and rest periods for employees who are mandated to stay overnight at the Employer's premises due to an emergency situation.

* * *

MONTGOMERY COUNTY, MARYLAND
COUNTY COLLECTIVE BARGAINING LAW

In the Matter of the Arbitration Between)
)
MUNICIPAL & COUNTY GOVERNMENT)
EMPLOYEE ORGANIZATION, UNITED)
FOOD and COMMERCIAL WORKERS,)
LOCAL 1994,)
)
Union,)
)
and)
)
Homer C. La Rue, Esq.
Impasse Neutral)
)
MONTGOMERY COUNTY GOVERNMENT,)
)
AWARD)
)
Employer.)
)
Re: Final Offer Arbitration.)
)
)

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Last Best Final Offer from Montgomery County Government34

RELEVANT COUNTY CODE PROVISIONS

Montgomery County Code (the “Code”), Article VII, Sections 33-81 and 33-108,
as amended by Ch. 57, Laws of Mont. Co. 2010. (Jt. Ex. 1¹).

33-81. Impasse procedure.

* * *

- (b) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the impasse neutral. If the parties have not reached agreement by January 20, an impasse exists.

* * *

- (5) On or before February 1, the impasse neutral must select, as a whole, the more reasonable, in the impasse neutral’s judgment, of the final offers submitted by the parties.

- (A) The Impasse neutral must first evaluate and give the highest priority to the ability of the County to pay for additional short-term and long-term expenditures by considering:

- (i) the limits on the County’s ability to raise taxes under State law and the County Charter;
- (ii) the added burden on County taxpayers, if any, resulting from increases in revenues needed to fund a final offer; and
- (iii) the County’s ability to continue to provide the current standard of all public services.

- B. After evaluating the ability of the County to pay under subparagraph (A), the impasse neutral may only consider:

- (i) the interest and welfare of County taxpayers and service recipients;

¹ “Jt. Ex.,” followed by a number means “Joint Exhibit” and the number thereof. “Co. Ex.,” followed by a letter, means “County Exhibit” and the letter thereof. “Un. Ex.,” followed by a number, means “Union Exhibit” and the number thereof.

- (ii) past collective bargaining contracts between the parties, including the bargaining history that led to each contract;
- (iii) a comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area in Maryland;
- (iv) a comparison of wages, hours, benefits and conditions of employment of other Montgomery County employees; and
- (v) wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County.

(6) The impasse neutral must:

- (A) not compromise or alter the final offer that he or she selects;
- (B) select an offer based on the contents of that offer;
- (C) not consider or receive any evidence or argument concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the impasse neutral; and
- (D) Consider all previously agreed on items integrated with the specific disputed items to determine the single most reasonable offer.

* * *

33-108. Bargaining, impasse, and legislative procedures.

- (f) (1) If binding arbitration is invoked, the mediator/arbitrator must require each party to submit a final offer, which must consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the mediator/arbitrator directs. If only complete package proposals are required, the mediator/arbitrator must require the parties to submit jointly a memorandum of all items previously agreed on.

* * *

- (4) The Impasse neutral must first evaluate and give the highest priority to the ability of the County to pay for additional short-term and long-term expenditures by considering:
 - (A) the limits on the County's ability to raise taxes under State law and the County Charter;
 - (B) the added burden on County taxpayers, if any, resulting from increases in revenues needed to fund a final offer; and
 - (C) the County's ability to continue to provide the current standard of all public services.

- (5) After evaluating the ability of the County to pay under subparagraph (A), the impasse neutral may only consider:
 - (A) the interest and welfare of County taxpayers and service recipients;
 - (B) past collective bargaining contracts between the parties, including the bargaining history that led to each agreement;
 - (C) a comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area in Maryland;
 - (D) a comparison of wages, hours, benefits and conditions of employment of other Montgomery County employees.

- (6) The offer selected by the mediator/arbitrator, integrated with all previously agreed on items, is the final agreement between the employer and the certified representative, need not be ratified by any party, and has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement, and any provision which requires action in the County budget must be included in the budget which the employer submits to the County Council.

PROCEDURAL HISTORY

Pursuant to the Montgomery County Code, Chapter 33, Article VII, as amended by Ch. 57 of the Laws of Montgomery County, Dec. 22, 2010, Homer C. La Rue was

selected by the Municipal & County Government Employees Organization, United Food and Commercial Workers, Local 1994 (the “Union” or “MCGEO”) and the Montgomery County Government (the “County” or the “Employer”) to be the mediator/arbitrator or impasse neutral². The County and the Union are referred to collectively as the “Parties.” The mediator/arbitrator found that the Parties were at a bona fide impasse, and that the dispute must be submitted to last offer binding arbitration.

The mediator/arbitrator issued Case Management Order (the “CMO”) No. 1 on February 16, 2011 and issued CMO No. 2 later on February 16, 2011, amending CMO No. 1. Among other things, the CMO required that each party submit a final offer which consisted of a complete package proposal together with a joint memorandum of all items previously agreed on. The submissions were made by the Parties on February 17, 2011. The Union’s Last Best Final Offer (LBFO³) is attached hereto and made a part hereof as Appendix A. The County’s LBFO is attached hereto and made a part hereof as Appendix G. The County and the Union reached a tentative agreement on a number of issues not impacting the economic items contained in their respective LBFOs, and those items were set forth in writing and signed by the chief negotiator for the Union and the chief negotiator for the County. The tentative agreements, dated February 19, 2011, are attached hereto and made a part hereof as Appendices B-F. This Award incorporates the agreed-upon contract provisions that were unchanged by the Parties during bargaining. The Award also incorporates those items set forth in the February 19, 2011 tentative agreements.

Hearings were held on February 18 and 19, 2011 at the Hilton, Washington DC North/Gaithersburg in Gaithersburg, Maryland. The Union and the Employer each were represented by legal counsel. The Union and the Employer each were given a

² Throughout this document, the terms “mediator/arbitrator” and “impasse neutral” shall be used interchangeably to refer to the same person referenced in the Montgomery County Code.

³The Parties’ LBFOs are set forth in the appendices exactly as submitted, including strike-outs and bolding for emphasis.

full opportunity to present evidence to the impasse neutral supporting their positions that their respective final offers, as a whole, were the more reasonable. A stenographic record of the hearing was made. The hearing was closed on February 19, 2011, and the record was left open for the submission of post-hearing briefs. Briefs were timely filed and served on March 2, 2011, at which time, the record was closed.

Because of the exigencies of time in preparing the budget for submission to the Montgomery County Council, the Parties directed the Impasse Neutral to issue the Award only on Monday, March 7, 2011 on or before 5:00 p.m. The Impasse Neutral was further directed to submit the reasoning for the Award within ten (10) days after the submission of the Award.

The Award and the reasoning for the Award are based on the record of proceeding and the arguments of the Parties. In considering the record and the arguments of the Parties, the Impasse Neutral has evaluated the two LBFOs in accordance with the factors set forth in the Code §§ 33-81 and 33-108. The Impasse Neutral served as the mediator in the instant matter prior to it moving to binding arbitration. Any information obtained from the Parties during mediation, however, has not been considered by the Impasse Neutral in arriving at the final decision in arbitration.

BACKGROUND FACTS

The bargaining unit, represented by the Union, consists of approximately 7,500 County employees in a broad variety of job classifications. The bargaining unit also represents persons working in the fire and police department, but the uniformed personnel in those departments are represented by another certified representative for the purposes of collective bargaining. The Parties agreed that the instant collective bargaining agreement (the "CBA") is for a one-year period from July 1, 2011

to June 30, 2012. (Jt. Exs. 4 and 5, Tr., p. 18⁴). Any items that were the subject of bargaining following the mediation prior to the instant arbitration may be the subject of bargaining when contract negotiations re-open for a successor agreement.

The County informed the Union, via letter dated February 15, 2011, that the County declared that several proposals submitted by the Union were non-negotiable subjects of collective bargaining. The Parties agreed prior to the arbitration hearing that those subjects included in the County's letter of February 15, 2011 would not be included in the scheduled arbitration, and that the Union would seek resolution before the Labor Relations Administrator as to whether its proposals, declared by the County to be non-negotiable subjects of collective bargaining, are negotiable.

Throughout the negotiations and the arbitration hearing, the County maintained that it needed \$25 million dollars in FY12 in concessions from the Union in order to address the current \$300 million dollar budget shortfall. The County argues that its proposal addresses the short-term need for a major reduction in costs and the long-term or structural⁵ change needed for financial stability. Its LBFO does so primarily by increasing the cost of health care and pensions for bargaining unit members. The County contends that that the LBFO which it has set forth, rather than that of the Union, addresses the long-term structural issues faced by the County. The County insists, therefore, that its LBFO is the more reasonable.

The Union, both during the negotiations as well as during the arbitration process, agreed to meet the County's demand for \$25 million dollars in concessions. The Union's proposal includes no wage increase, increment or longevity payments under the new CBA. The Union contends that its LBFO saves the County in FY12 exactly the amount of money that the County demands in concessions---\$25 million

⁴ "Tr., p.," followed by a number, means "Transcript" and the page cited.

⁵ The County contends that the budget woes facing it are "structural" rather than "cyclical." A "cyclical budget gap" is a short-term imbalance between projected revenues and desired expenditures that reflects the ups and downs of the business cycle. In contrast, a "structural budget gap" exists when projections of expenditures exceed projections of ongoing revenues on a persistent and recurring basis. The distinction between the two is that a structural budget gap continues to exist even when revenue growth resumes. (Co. Ex. H, p. 1).

dollars. The Union contends, therefore, that the County needs no additional revenue to pay for short-term or long-term expenditures because the Union's LBFO requires no such expenditures. The Union further contends that no additional taxes are necessary to pay for the new CBA; and therefore, there is no additional burden on the taxpayers to fund the Union's proposal. The Union, argues, therefore, that its LBFO is more reasonable than that of the County.

POSITIONS OF THE PARTIES

A. Position of the County

The County's argument in favor of its position that its LBFO is the more reasonable begins with the undisputed fact that the nation has undergone the worst recession since the "Great Depression of 1929." That recession has impacted Montgomery County just as it has impacted other governmental entities across the country. The County contends that it has demonstrated that it can longer afford its current costs. The County's ability to afford "...additional short-term and long-term expenditures...." is the first consideration under §§33-81 (b)(5) and 33-108 (f)(4).

Joseph Beach ("Mr. Beach"), Director of the County's Office of Management and Budget, projected a \$300 million deficit for FY12. Mr. Beach further testified that the present deficit comes after a \$907 million dollar budget gap in FY11. (Tr., p. 81). Mr. Beach noted that the \$300 million dollar deficit compared "...favorably [to the \$907 million dollar gap in FY11]...but [that] the challenge...[was] actually even greater because...[of the] more serious reductions made in addressing..." the \$907 million dollar deficit. Mr. Beach went on to testify that the County has had to reduce its revenue estimates for FY12 by about \$73 million dollars and by \$86 million dollars in FY11. According to Mr. Beach, the County's "...revenue deterioration or decline in FY11 has depleted the County's projected reserves ending FY11/beginning FY12 close to \$46 million." The projected reserves had been near \$140 million dollars. (Tr., p. 57-58). He also noted that the County, for FY12, was assuming that County

property taxes would be at the County Charter ("Charter") limit. The Charter restricts the rise in property taxes to the amount of inflation from one year to the next.

In further support of its position, the County notes that to balance the FY 12 budget and to obtain long-term cost-savings, the County Executive is proposing a number of measures including:

1. cancelling postponed general wage adjustments;
2. adjusting the health benefits cost-share arrangement between the County and MCGEO members by contributing 70 percent of the total premium cost of the lowest cost health plan provided by the County toward an employee selected health plan and contributing 60 percent of the premium of the lowest cost plan for a family coverage plan, or a self plus one coverage plan;
3. adjusting the prescription plan cost-share arrangement between the County and MCGEO members by contributing 70 percent of the total premium cost for dental coverage for single and 60 percent for a family coverage plan or a self plus one coverage plan;
4. raising by two percent bargaining unit members' contribution to the Employee Retirement System (ERS);
5. reducing by two percent the County's contribution to the Retirement Savings Plan (RSP) and the Guaranteed Retirement Income Plan (GRIP). (County Brief at 2).

The County argues further that its residents are the highest taxed in the State of Maryland and among the highest taxed in the Washington Metropolitan area. Mr. Beach testified that the County, in the past few years, has increased the income tax to the State-authorized maximum. The property tax cannot be raised without a unanimous vote of the County Council. In addition, the County has increased the energy tax, taxes on hotels and motels, and emission taxes. These are at their legal cap, or an increase in these taxes would not produce a significant amount of revenue to address the \$300 million budget shortfall. Mr. Beach went on to note that there have been increases in the phone tax, both for landlines as well as for wireless service. The recordation tax as well as the energy tax have been increased several times. Mr. Beach concluded there already is a significant tax burden on County

residents and business making an increase in taxes to meet the budget shortfall unrealistic if not impossible. (Tr., p. 85-87).

The County further painted a bleak picture of the County's fiscal situation, while acknowledging that revenues for FY 12 are expected to increase. That increase, however, will not reach the levels experienced in FY 07. (Co. Ex. A, p. 28). Regional economic indicators, according to the County, are consistent with the view of modest growth.

David Platt, Chief Economist with the Department of Finance of Montgomery County, gave an account of the economic indicators and revenue update for the County. (Co. Ex. A). First, the Consumer Price Index ("CPI") is at 1.72 percent as compared to 4.5 percent in FY 08. The CPI is used to calculate the increase in real property taxes for FY 12. This means that the tax may not increase more than 1.72%. (*Id.* p. 11). (Tr., p. 352-353). The County's yield on its investments is down from 4% two years ago to .14% at this time. (Tr., p. 344); (*Id.*, p. 4). The unemployment in the County has gone from 3% in 2008 to 5.2% in December of 2010. While these rates of unemployment are below the national average, as they always have been, the rates, nonetheless, are higher than in past recessionary periods. (Tr., p. 356-359).

Mr. Platt further noted that the total sales of existing homes decreased 5.6% in 2010 as compared with an increase in 2009 of 21.8%. (*Id.*, p. 17). While the sales of existing homes in the County decreased in 2010, the average sale price increased less than 2%. This follows decreases in 2008 of 8.4% and decreases in 2009 of 13.8%. (*Id.*, p. 18). Both residential and commercial property tax assessments have seen double-digit declines.

Revenue-raising options not being possible, Mr. Beach testified that the County had to address compensation. According to Mr. Beach, approximately 80% of the budget for the four County agencies goes toward salaries and benefits. (Tr., p. 55). Nearly 87% of the County's FY 11 \$3.6 billion dollar budget went to six functions of the government: (1) Montgomery County Public Schools ("MCPS"); (2) Public Safety;

(3) Montgomery College; (4) Health and Human Services; (5) Transit; and (6) Transportation. Of that 87%, nearly 53% of the budget is earmarked for MCPS. That money, once allocated to the MCPS, is no longer subject to the County's spending discretion, but rather, lies solely within the discretion of the Superintendent of Schools.

The County rejects the argument that the County could fund the MCPS at some level other than its present one. To do so would jeopardize the County's ability to qualify for additional State aid for the public schools. The State's maintenance-of-effort policy requires that per-pupil funding remain constant from one year to the next in order to qualify for State aid. During the last two years, the County failed to meet its maintenance-of-effort requirement, and it had to seek waivers. One was received from the Maryland General Assembly, and the other was from the State Board of Education. (Tr., p. 48-49). Absent those waivers, the County would have lost additional State funding for the schools. The County maintains that if it is to continue to attract higher income families, who can pay higher taxes, the County must maintain an excellent school system for its residents.

In addition to the ability of the County to pay for additional short-term and long-term expenditures through an ability to raise taxes, there are two other statutory considerations. Consideration must be given to the added burden on County taxpayers resulting from the increase in revenues needed to fund any final offer. The Arbitrator also must consider the County's ability to continue to provide the current standard of public services.

In support of these two considerations, the County contends that for every income level, except those who make \$25,000 and under, Montgomery County families are the second-most taxed in the Washington Metropolitan area. That area includes a comparison of the tax burden for a family of three residing in: (1) Washington, D.C.; (2) Prince George's County, MD; (3) Alexandria, VA; and (4) Fairfax, VA. (Tr., p. 581-582). (Un. Ex. 8). The County argues that in recent years, it has raised the County income tax to the State-authorized maximum of 3.2 percent

of taxable income. An increase above that level would require approval by the General Assembly. In addition, the County has increased the property tax to the limit that can be expected to be placed on County residents. A further increase of the tax would require a unanimous vote of the County Council. As noted earlier, the County also has increased the energy tax, taxes on hotels and motels, and emission taxes. These are at their legal cap, or an increase in these taxes would not produce a significant amount of revenue to address the \$300 million budget shortfall.

The County's conclusion as to the tax burden on County taxpayers is that they are at their maximum burden. The County contends that it essentially has two choices. One is to reduce expenditures to meet the \$300 million budget gap. The second choice would be that the County will have to reduce services even further than it already has done.

In looking at the two proposals, the County contends that its LBFO must be seen as the most reasonable. The County argues that "...the County has a government it cannot afford in both the short-term and the long term." (County's Brief at 32). It has attempted to meet that challenge by increasing revenues, and that has not worked. The County pointed to the study done by the Office of Legislative Oversight commissioned by the County Council. The Report⁶ (Co. Ex. H) was part of a two-part project on the topic of achieving a structurally balanced budget. In essence, the County, in reliance on the Report, argued that it must now address long-term costs—i.e., the structural problem. The County argues that "[t]he largest cost-driver is employee pay and benefits, which account for 82 percent of all tax-supported funding." (*Id.*, p. 1 and Un. Ex. 3, p. 13). The County, furthermore, asserts that between FY 02 and FY 11, personnel costs (including pay and benefits) accounted for 82% of all tax supported spending. This resulted in a 64% increase in personnel costs while the workforce over the same period increased by only 10%. (*Id.*, p. 2). Further, the primary driver behind higher personnel costs has been the

⁶ Orlansky, Karen, Office of Legislative Oversight, *Office of Legislative Oversight Report 2011-2: Achieving a Structurally Balanced Budget in Montgomery County, Part I: Revenue and Expenditure Trends* (Nov. 19, 2010).

average cost per employee. Employee salaries have grown by 50% in the aggregate. The costs of health and retirement/pension benefits, on the other hand, have increased more than 120%.

In arguing that the County's LBFO is the more reasonable of the two, it writes, in pertinent part:

Both parties' proposals...are very similar. Both packages propose not funding a 4.5 percent wage adjustment that was not paid in FY10...Both propose to decrease the County's contribution to the RSP and GRIP by two percent...The Union proposes to suspend the County's contribution to the ERS for FY12 while its members continue to contribute to the system without earning service credit for that year...Meanwhile, the County proposes to permanently increase MCGEO members' contribution to the ERS by two percent.

The greatest divergence in the parties' packages is in the area of healthcare benefits. The Union's package proposes to have all of its members who are enrolled in the Carefirst POS plan transferred to the United Healthcare Select HMO...The County package proposes to adjust the health benefits cost-sharing arrangement between the County and MCGEO members by making the County's contribution 70 percent of the total premium cost of the lowest cost health plan provided by the County toward an employee selected health plan and 60 percent of the premium of the lowest cost plan for a family coverage plan, or a self plus one coverage plan...It further proposes to adjust the prescription plan cost-share arrangement between the County and MCGEO members in the same manner...

As a total package proposal, the County's final offer, however, is more reasonable than the Union's because it grants the County the short-term and long-term savings necessary to help the County balance its budget. The Union's proposal, on the other hand...only offers the County temporary relief..., and could, if awarded, potentially increase the County's costs substantially....(County Brief at 32-33).

B. Position of the Union

The Union represents 7500 employees of the County, many of whom also live in Montgomery County. According to the Union, it has provided the County with what it has stated that it needs now for a one-year contract which both sides agree is the

dispute before the Impasse Neutral. The County's demand was for \$25 million in concessions from the Union. While the Union questions the actual need for such a large amount in concessions, the Union asserts that it took the County at its word and provided the savings demanded by the County. As also noted by the County, the Union also asserts that the two LBFOs are not dramatically different in many respects. The Union argues, however, that the County's LBFO would unnecessarily shift all of the costs to employees of the bargaining unit to achieve the savings that both LBFOs achieve.

The Union in its brief, sets forth a side-by-side comparison⁷ of the two proposals:

The Union's Proposal	The County's Proposal
1. Wages— No wage increase or increments or longevity Savings -- \$3.75 million	1. Wages – No wage increase or increments Savings -- \$3.5 million
2. Benefits – a. Transfer of employee medical coverage From Carefirst to United Healthcare; Savings -- \$2-2.2 million b. Plan to establish wellness programs to achieve better employee health and productivity, health management programs c. Retirement -- No Employer contribution to deferred benefit plan for FY 2012 Savings -- \$16.3 million d. Retirement Savings Plan – Reduction of County contributions to RSP Savings -- \$2.4 million e. Guaranteed Retirement Income Plan (GRIP) – Reduction of County contribution to GRIP Savings -- \$.7 million f. Review of Funding strategies and plan design changes to reduce plan's unfunded liability Total Union Savings—approximately \$25 million	3. Benefits— a. Increase employee contribution to 30% from current 20% for individual coverage and 40% of the cost of lowest healthcare program for family coverage Savings -- \$14 million b. No plan to address long term issue of savings from managed health care c. Increase employee contribution to ERS and GRIP plans Savings -- \$2.1 million d. Increase employee contributions to RSP and GRIP plans Savings -- \$3.5 million e. Reductions in Current Medical Coverage and Reduction in Services Savings -- \$1.6 million f. No Plan – to address long-term issue of unfunded pension liabilities. County proposal might actually increase liability. Total County Savings—approximately \$25 million

The Union contends that the “ability to pay” statutory factor is actually a non-issue in this dispute. The County has the ability to pay for “additional short-term

⁷ Un. Brief at 6.

and long-term expenditures” because the Union is not seeking additional wages and benefits. Indeed, the Union has met the County’s demand for \$25 million dollars in concessions. The Union, moreover, argues that its LBFO permits the County to maintain the current level of services, simply with the County spending less money to do so.

While the County made the argument during the presentation of its case that the issue facing it was a “structural deficit,” the Union contends that the County failed to substantiate the claim with sufficient evidence to make the claim credible. Amy McCarthy (“Ms. McCarthy”), a consultant, testified on behalf of the Union. She prepared an exhibit showing the so-called “structural deficit” claim made by the County to the various unions during negotiations and arbitrations. (Un. Ex. 8, p. 2). According to Ms. McCarthy, the County’s structural deficit argument has been made at least since FY08. In pertinent part: she testified:

So if you look at all of these different presentations to the Unions, this is what you see. You see the current year is balanced, and the next year has a small deficit, and the deficits just grow, and grow to the end of the [County’s] analysis...[T]hat’s consistent with what has been given to the Union’s this year. The current year, the deficit has been solved, but next year it’s \$300 million, and in the end it’s \$900 million, so it’s the same type of presentation that the Unions receive perennially from the County. (Tr., p. 557-558).

On cross-examination of Ms. McCarthy, the County presented the County Legislative Oversight Report (Co. Ex. H) which found that the County has a structural deficit. Ms. McCarthy, who was familiar with the Report, continued to maintain that the County continues to solve the budget deficit each year in which it contends that it has one. The County presented no witness to testify to the data contained in the Report used to cross-examine Ms. McCarthy, and the Union had no opportunity to cross-examine the person or persons who gathered and reported the data used in the Report. (Tr., p. 584-590).

ANALYSIS AND DECISION

The *Montgomery County Code §33-108 (f)(4)* establishes the criteria for resolving a bargaining impasse between the County and the Union. The statute requires that the parties submit a complete package of their respective proposals together with a memorandum of all items agreed to. It is for the Impasse Neutral to select “...as a whole, the more reasonable...of the final offers submitted by the parties.” *County Code §33-81(b)(5)*. In addition, the Impasse Neutral may “...not compromise or alter the final offer that he or she selects...[and the selection must be based] on the contents of that offer.” *County Code §33-81(b)(6)(A)(B)*. The obvious intent of the statutory language is to encourage the parties to address their respective interests with the understanding that a third-party will assess the reasonableness of their respective offers consistent with the statutory criteria.

The statute further directs that the Impasse Neutral
...first evaluate and give the highest priority to the ability of the County to pay for additional short-term and long-term expenditures by considering:

- (A) the limits on the County’s ability to raise taxes under State law and County Charter;
- (B) the added burden on County taxpayers, if any, resulting from increases in revenues needed to fund a final offer; an
- (C) the County’s ability to continue the current standard of public services. *County Code §33-108 (f)(4)*.

After evaluating the above-noted factors, the Impasse Neutral is authorized by the statute to consider other factors. Those other factors, however, are limited to those enumerated in the *County Code*. After considering the County’s ability to pay, there is no statutory mandate that the Impasse Neutral consider the other statutory factors.

The Impasse Neutral concludes that the Union’s LBFO is “...as a whole, the more reasonable...of the final offers submitted by the parties.” This conclusion is

based primarily on the County's ability to pay as supported by evidence in this record.

The County's Ability to Pay

A. The Economic Factors

The County's primary witness on the state of the County fiscal situation, Mr. Platt, testified that the County's fiscal health is improving as is the case on the national level. While the improvement is not likely to take the County back to the levels experienced prior 2007, the economic indicators point to a trend of improvement. When asked whether the economic conditions, for the first few months of 2011, in Montgomery County were improving, he gave a cautious reply, stating that he was seeing improvement. (Tr., p. 380-382). The one economic indicator, which Mr. Platt expressed concern about, was home sales. While the price for homes has gone up 8 percent, the number of home sales has declined. Mr. Platt attributed this decline to the elimination of the first-time homebuyer's tax credit in June of 2010. (Tr., p. 359-361). Other factors, however, such as the unemployment rate in the County, which is going down also is an indication of improvement. On the upward turn are resident employment, payroll employment and the stock market. (Tr., p. 354-357). Mr. Platt testified to an encouraging positive trend in a number of the economic indicators on which the County relies. He noted, however, that he remained cautious as to the durability of the trends. (Co. Ex. A, p. 22).

While the County makes the argument that it is facing a structural deficit, there is little evidence in this record to support the claim. Indeed, Ms. McCarthy, who testified for the Union, indicated her awareness of the Report on which the County relies for its structural deficit argument. The County, however, presented no witness to testify to how the data was gathered and reported. The Report was admitted into evidence at the arbitration hearing because its authenticity as an official government document cannot truly be denied. Without the Union having had

an opportunity to cross-examine the person who prepared the Report or the person who was responsible for its production, the Report cannot be given the same weight as the testimony of a credible witness, who was subject to cross-examination during the hearing.

Ms. McCarthy testified credibly that the County has consistently made the argument that there is a deficit only to close the gap in the preparation of the actual budget. The actions of the County, together with the other evidence in this record, do not support a claim of a structural deficit. This record shows there to be an improvement in the economic conditions of the County, albeit limited and not at the levels of past years following a concessionary cycle.

B. The Similarity of the Proposals

The County, in making its case for its LBFO acknowledges that "...both parties' proposals...are very similar." (County Brief at 32). The County, in pertinent part, cites the primary provisions of the two proposals:

Both packages propose not funding a 4.5 percent wage adjustment that was not paid in FY10...Both propose to decrease the County's contribution to the RSP and the GRIP by two percent...The Union proposes to suspend the County's contribution to the ERS for FY12 while its members continue to contribute to the system without earning service credit for that year...Meanwhile, the County proposes to permanently increase MCGEO members' contribution to the ERS by two percent. *Id.*

As acknowledged by the County, the greatest difference between the two proposals is in the area of healthcare benefits.

The Union's package proposes to have all of its members who are enrolled in the CareFirst POS plan transferred to the Unitedhealthcare [sic] Select HMO...The county package proposes to adjust the health care benefits cost-sharing arrangement between the County and MCGEO members by making the County's contribution 70 percent of the total premium cost of the lowest cost health plan provided by the County toward an employee selected health plan and 60 percent of the premium of the lowest cost plan for a family coverage plan, or a self plus one coverage plan...It further proposes to adjust the prescription plan cost-

share arrangement between the County and MCGEO members in the same manner. *Id.*

The County argues that its proposal is more reasonable because it gives the County “...the short-term and long-term savings necessary to help the County balance its budget. It also bends the future cost curves downward.” *Id.* The County acknowledges that the Union’s proposal gives the County its needed relief, but that it does so, only short-term. The Impasse Neutral disagrees.

C. Health Care Costs

First, Wesley Girling, Benefits Manager for Montgomery County Government, and Stuart Wohl, East Region Health Practice Leader for the Segal Company, an actuarial, benefits, and human resources consulting firm both concurred in the savings that the Union’s healthcare proposal would yield. The change in plans would produce almost \$2.0 million. (Tr., p. 247-252; p. 520-523). (Un. Ex. 7). The Union’s proposal, contrary to the County’s contention, does address long-term healthcare costs. The County’s proposal merely shifts a greater portion of the burden of the rising healthcare costs to the bargaining unit members. The County’s proposal, however, does not address the rise in long-term healthcare costs. Presumably, the County’s response for the next rise in costs would be to shift a greater burden of the costs to the members of the bargaining unit. The statutory criteria requires that the Impasse Neutral evaluate the proposals in terms of the County’s ability to pay for long-term expenditures. It stands to reason that the more reasonable proposal in terms of this factor is the one that will address the source of the rising costs. The ability to shift more of the cost to the employees does not address the manner in which the County may reduce its costs; and thus, prevent a rise in its share of the healthcare burden as well as that of the employees.

The Union’s proposal addresses the issue of future rising costs. Mr. Wohl testified extensively as to how cost management measures used by other public sector employers has resulted in real and substantial savings in healthcare costs.

The measures to which he testified included health care coordination, chronic disease management programs and employee wellness programs. The strategies addressed by Mr. Wohl admittedly were not based on data for Montgomery County; but rather, were examples of actions taken by one of Mr. Wohl's other public employer clients in the D.C. metropolitan area. (Tr., p. 525). Mr. Wohl compared the rise in the cost of claims if the County continued with its present healthcare system as compared with the cost of claims if the County and the Union engaged in a collaborative effort to implement an aggressive medical management and wellness program. (Un. Ex. 7, p. 7). Mr. Wohl testified that most insurers and healthcare consultants assume a rise of 10% in healthcare claims. (Tr., p. 525-527). The cost of such claims by 2014 would be approximately \$84.7 million, an increase of \$7.7 million over the 2013 cost. Assuming no influence on the 10% annual rise, the costs would continue to rise.

If the 10% rise in claims is the continuing assumption, the outcome in claim costs differs if an aggressive program of medical management and wellness is implemented. Such a program would include, but not be limited to, an improvement in treatment compliance, people taking their medications, getting the appropriate screenings, and getting the right lab work. A 10% improvement in treatment compliance (illustrated in the suggestions just mentioned) would result in a 1.7% savings in claim costs over three years. This would result in a total claim cost of \$83.3 million in 2014 rather than the \$84.7 million if the status quo is maintained.

On cross-examination, Mr. Wohl was asked whether he would tell a public employer client that it could "...count on receiving...the savings [to which he testified], and that they could budget based on the number...[in Union Exhibit, p. 7]." He responded that public healthcare predictions to the hundred thousand were very difficult, but that his figures were "...a good ballpark estimate." (Tr., p. 546-547). Mr. Wohl also acknowledged that changing the cost-sharing calculation between employers and employees is a trend. (Tr. p. 547-548).

The Union's healthcare proposal also addresses the long-term issue in another way which is completely ignored by the County's proposal to shift a greater burden of the cost to the employees.

Obviously, beyond the actual numbers in terms of cost savings, there is the enormous benefit to the County of having a healthier, more productive work force. This could be a work force that will take fewer sick days, could result in less overtime costs, will be more productive and will be less likely to drive health care costs with the costs of chronic illnesses such as diabetes and hypertension. (Union Brief at 11).

The County argues that "[i]t is clear that the County has limited or no room to pay for the additional costs of healthcare costs increases without further burdening County taxpayers whether through tax increases or further cuts in services." (County Brief at 33). The evidence in this record, however, does not show that the Union's proposal has the effect which the County contends. In the long-term, the County's proposal does nothing to address the rising costs of healthcare. For that reason, the County's proposal could result in greater long-term costs to County taxpayers.

D. Pension Costs

The County presents no independent argument as to why the pension proposal portion of its LBFO is more reasonable than that of the Union. It merely asserts that "...the reasonableness of the County's package is the fact that other comparable jurisdictions are making changes to health and pension benefits programs as a method of reducing their employee costs." (County Brief at 33). While such an argument may be considered among the statutory facts, it does not make the necessary nexus between the pension proposal portion of its LBFO and the County's ability to pay.

In truth, the County and the Union proposals mirror one another. The Union's proposal calls for a one-year suspension of certain credits and contributions to the defined benefit programs which reduces the amount that the County would have to

pay into those programs for FY2012. There would be a 2% reduction in the County contribution to the Retirement Savings Plan ("RSP") and a 2% reduction in the County contributions to the Guaranteed Retirement Income Plan ("GRIP").

The Union's consultant, Eli Greenbaum for the Segal Company, and Mr. Girling for the County, both did cost estimates of the Union's proposal. Their estimates and their subsequent testimony concluded that the Union's proposal would result in a savings of \$19.4 million for FY2012. (Un. Ex. 4) (Tr., p. 247-252). Mr. Greenbaum also testified, without contradiction, that because all of the unions had foregone wage increases in the past few years, "...the unfunded liability of the system was \$52 million less than was anticipated...." (Tr., p. 502-503). The actuarial assumptions had been based on certain wage increases which had been foregone by the unions.

In addition to the savings to the system occasioned by the Union foregoing wage increases in the past as well as for FY2012, the Union's proposal addressed structural problems that would result in long-term savings to the retirement system; and thus, lessen the burden on taxpayers. The County's proposal on pensions only shifted a higher percentage of the rising cost to the employees; and it did not address long-term issues. Indeed, the County's pension proposal could have the effect of slightly increasing the fund's liability. (Tr., p. 504-505).

Mr. Greenbaum went on to testify that some of the structural changes that the parties could negotiate included, but were not limited to: 1) amending the retirement plan to reduce benefits; 2) changing the way in which COLAs are structured; 3) changes in COLAs post-retirement; 4) changes in retirement eligibility; 5) benefit multipliers; and 6) passing anti-spiking legislation. The Union's pension proposal includes a commitment to work collaboratively with the County on these alternative funding strategies to reduce the unfunded liability of the pension fund. Mr. Girling, on behalf of the County, testified that the Union's proposals all had merit and were "viable options." (Tr., p. 247-248).

In the final analysis of the ability of the County to pay, based on the statutory factors, the Impasse Neutral finds that the Union's proposal, taken as a whole, is

more reasonable than that of the County. Both parties agree that the overwhelming consideration is the cost of healthcare and pensions, both short and long-term. The County's proposal does nothing to address the long-term cost factors except to shift a greater burden to the employees of the County. One of the important objectives of collective bargaining is that the parties work together to solve mutual problems. Sometimes, that may mean employees foregoing wage increases or benefits. This Union has shown its willingness to share its burden of that sacrifice. The Impasse Neutral need not itemize all of the examples of this Union's willingness to cooperate with the County in solving budget issues. In the context of a one-year agreement at issue in this arbitration, the Union has met the County's demand for \$25 million in savings.

E. Post-Ability-to-Pay Factors

After evaluating the ability of the County to pay under the statutory criteria, the Impasse Neutral has considered: the interest and welfare of County taxpayers and service recipients; past collective bargaining contracts between the parties; a comparison of wages, hours, benefits and conditions of employment of similar employees and employers in the Washington Metropolitan Area in Maryland; and a comparison of wages, hours, benefits and conditions of employment of other Montgomery County employees. The Impasse Neutral has thoroughly reviewed the record and considered the briefs of the respective parties with respect to these factors. No "post-ability-to-pay factor," nor a combination of them, leads to the conclusion that the County's package is the more reasonable; its ability to pay notwithstanding.

AWARD

The Impasse Neutral has thoroughly considered all of the evidence and arguments of the Parties in light of the statutory factors set forth in the Montgomery County Code, Section 33-108. The Impasse Neutral in making a determination in this matter has "...first evaluate[d] and give[n] the highest priority to the ability of the

County to pay for additional short-term and long-term expenditures....” (Sec. 33-108

(4). In so doing, the Impasse Neutral has considered:

- (A) the limits on the County's ability to raise taxes under State law and the County Charter;
- (B) the added burden on County taxpayers, if any, resulting from increases in revenues needed to fund a final offer; and
- (C) the County's ability to continue to provide the current standard of all public services. (Sec. 33-108 (4) (A)-(C)).

Having considered the record and the statutory factors, the Impasse Neutral makes the following determination:

1. The County has the ability to pay the cost of the Union's LBFO.
2. The Union's LBFO is determined to be more reasonable than the LBFO of the County. The Impasse Neutral awards in favor of the Union's LBFO.
3. The Award "only", issued on March 7, 2011 is incorporated into this "Decision and Award" without changes to the Award issued on March 7, 2011.
4. All of the provisions of the expiring agreement, which are not included among the items in dispute, having been tentatively agreed on, are incorporated into this Award and are incorporated into the successor collective bargaining agreement.
5. Those items, signed-off on during the negotiations, including those negotiations that took place during the mediation/interest arbitration processes, are incorporated into this Award and are incorporated into the successor collective bargaining agreement.

Dated: March 28, 2011
Columbia, MD

Homer C. La Rue

Homer C. La Rue
Impasse Neutral

AFFIRMATION

I, Homer C. La Rue, being admitted to practice in the courts of New York, Maryland, and the District of Columbia, understand the penalties for perjury, and I affirm that this document is my Decision and Award, and that the signature affixed above is mine.

Homer C. La Rue

March 28, 2011

Date

Homer C. La Rue

APPENDIX A

Last Best Final Offer from MCGEO, UFCW, Local 1994

APPENDIX B

Tentative Agreement—MCGEO-Mo.Co: DOT Subcommittee

APPENDIX C

Tentative Agreement—Public Safety Subcommittee Report

APPENDIX D

Tentative Agreement—Wages, Salary, and Employee Compensation

APPENDIX E

Tentative Agreement—SOP, Use of Cell Phones, Radios & Reading Materials....

APPENDIX F

Tentative Agreement—Appendix II, OPT Unit, Dept. of HHS

APPENDIX G

Last Best Final Offer from Montgomery County Government

GOVT



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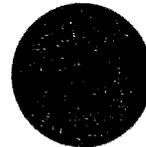
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

061726

Isiah Leggett
County Executive

MEMORANDUM

April 1, 2011



TO: Valerie Ervin, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Memorandum of Agreement between the County and FOP

I have attached for the Council's review the agreement resulting from the recent "reopener" collective bargaining negotiations between the Montgomery County Government and the Fraternal Order of Police Montgomery County Lodge 35, Inc (FOP). The agreement is the product of an Interest Arbitration Decision by arbitrator Jerome T. Barrett in favor of the FOP. A copy of the Opinion and Award is attached. The agreement reflects the changes that will be made to the existing Collective Bargaining Agreement effective July 1, 2011 through June 30, 2012. I have also attached a summary of the changes which denotes if a contract item is funded in my proposed budget. The existing contract calls for \$135,000 for tuition assistance funding for FOP members in FY 12 and I have proposed funding for this provision. The fiscal impact statement has been transmitted to Council as a separate document by the Office of Management and Budget.

cc: Joseph Adler, Director, Office of Human Resources
Joseph Beach, Director, Office of Management and Budget
Thomas Manger, Chief, Department of Police
Marc Hansen, County Attorney, Office of the County Attorney

RECEIVED
MONTGOMERY COUNTY
COUNCIL

2011 APR -5 AM 10:11

Summary of Proposed Labor Agreement with FOP Effective FY 2011

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
1.	5.C/ Multilingual Pay	At it's option, the County may freeze the testing of officers for the Multilingual program	No	No	No	No	
2.	24.A/Health Benefits	Provides for no change in County 80 percent premium contribution for health care plans	Yes	Yes	No	No	CE's proposed budget recommends increasing employee share of insurance premiums for benefit plans other than health from 20% to at least 30% and adding salary based tiers.
3.	24.G/Other Benefits	Provides for no change in County 80 percent premium contribution for benefit plans other than health care plans included in 24.A	Yes	Yes	No	No	CE's proposed budget recommends increasing employee share of health insurance premiums from 20% to at least 30%. Budget further recommends changes to prescription drug plan and adding cost sharing tiers
4.	28.I/ FY12 Service Increment	Defer the FY 11 3.5% step Qualified will receive one 3.5% increment in FY 12; Longevity and Increment steps will not be paid if Council does not fund	Yes	Yes	No	No	CE's proposed budget does not include funding for service increments
5.	31/ Reopener	Removed dated language	No	No	No	No	

Summary of Proposed Labor Agreement with FOP for FY 2011

Page 2

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires regulation change	Notes
6.	36.A/ Wages	The 4.25% GWA for FY 10 will be postponed and will not be effective in FY 11 and FY 12 No GWA for FY 12	No	No	No	No	
7.	47/ Term of Agreement	July 1, 2010 – June 30, 2012	No	No	No	No	
8.	57/Retirement	Provides for no changes to Group F retirement contributions	Yes	Yes	Yes	No	CE's proposed budget recommends increasing employee contribution by 2% of salary.
2010 Concession Agreement with Fiscal Impact in FY 12							
9.	39/ Tuition Assistance	\$135,000 cap for Police tuition assistance funds	Yes	Yes	No	No	CE's proposed budget includes funding for Police tuition assistance

**MEMORANDUM OF AGREEMENT
BETWEEN
THE MONTGOMERY COUNTY GOVERNMENT
AND THE
FRATERNAL ORDER OF POLICE MONTGOMERY COUNTY LODGE No. 35, INC.**

The Montgomery County Government (Employer) and the Fraternal Order of Police, Lodge 35 (Union), agree that their collective bargaining agreement effective July 1, 2010, through June 30, 2011, is extended through June 30, 2012, and is subject to the amendments shown on the following pages.

Please use the key below when reading this agreement:

Underlining
[Single boldface brackets]
* * *

Added to existing agreement.
Deleted from existing agreement.
Existing language unchanged by parties.

* * *

Article 5 Tech Pay

* * *

Section C. Multilingual Pay Differential.

* * *

6. For FY12, at the County's option, no new officers will be tested for entry in to the Multilingual program.

* * *

Article 28 Service Increments

* * *

Section I. FY12 Increment and Longevity Step Increases. For FY12 only, qualified unit members shall continue to defer one (1) 3.5% step. Qualified unit members shall receive one (1) 3.5% step on their service increment date. Increment and Longevity steps will not be paid if not funded by the County Council.

* * *

Article 31 Reopener

* * *

Section F. Reopener Matters.

Second Year. Reopen for bargaining in the first year of the agreement for 2nd year of the contract on or before November 1, 2010 with timetable and impasse procedures set forth in PLRA, Section 33-81 on the following subjects:

1. Cash Compensation for FY 12
2. Whether a third year with a reopener on cash compensation will be added.

[If the parties have not reached agreement by January 20, 2011, an impasse shall be deemed to exist, and the impasse procedure provided in PLRA Section 33-81 shall be implemented.]

* * *

Article 36 Wages

Section A. Wages. Effective July 1, 2007, the salary schedule shall be increased by adding \$3,151 at Step 0, Year 1 with increments and promotions for all other steps and pay grades calculated from the new Step 0, Year 1 basis. Increments and longevity shall continue to be calculated as required by Article 28. The percentage increases upon promotion shall continue (up to the maximum for each rank) to be: 5% between PO I and PO II; 5% PO II and PO III; 5% between PO III and MPO; 10% between MPO and Sergeant; and, subject to Section D, *infra*, 5% between POC and POI. (Appendix T).

The four and one-quarter (4.25) percent wage increase scheduled to take effect in the first full pay period following July 1, 2009 shall be postponed, and shall not be effective during fiscal year 2010 [and], 2011, and 2012.

* * *

Article 47 Duration of Contract

This agreement shall become effective on July 1, 2010, and terminate on June 30, 2012, [unless extended to June 30, 2013 pursuant to Article 31 *Reopener*]

* * *

**In the Matter of Interest Arbitration
Between :**

**Montgomery County Maryland
(Employer)**

And

**FOP Lodge 35
(Union)**

APPEARANCES:

For the Employer: William Snoddy, Esq.
Associate County Attorney
101 Monroe Street, 3rd Floor
Rockville, MD. 20850

For the Union: Margo Pave, Esq.
Zwerdling, Paul, Kahn & Wolly, P.C.
1025 Connecticut Avenue, Suite 712
Washington D.C. 20036

Introduction

The Montgomery County Police Labor Relations Act, Chapter 33, Section 33-81 of the Montgomery County Code (herein after referred to as PLRA) provides that when an impasse has been reached in negotiations, the parties are to submit their final offer, and an Impasse Neutral is to select, as a whole, the "most reasonable" of the two Final Offers.

The parties reached impasse on January 20, 2011, and based on a prior arrangement, the undersigned Impasse Neutral conducted a day of mediation and two days of arbitration during the week of January 23, 2011. Following the County statute, the parties presented testimony, evidence, exhibits and argument. Counsel for each party presented closing arguments in place of briefs on January 28. A transcript made at the hearing was received by the undersigned on February 9, 2011.

A review of Herbert Fishgold's Opinion and Award (FOP Exh. 4) involving a similar process last year with the same parties shows a clear parallel to this Impasse Neutral's experience in the instant case. A portion of his thinking is quoted here:

"Much of the hearing was taken up with economic presentations by both sides with regard to the FY 2011 budget deficit, the long range CIP projection, the breakdown of cost, programs, services, and purchases under the tax-supported Operations Budget which funds compensation, and Capital Budget for facilities , which is largely funded by borrowing, with each party seeking to support their respective positions, with FOP pointing to "priorities", and County pointing to balancing public interest with a deficit budget.

"While these presentations obviously are the type of economic data useful in the context of complete collective bargaining or multi-year considerations of proposed general wage increases, they have a much more limited application in this narrow reopener ---."

The impasse procedure of the PLRA, amended last year, places a complex series of requirements for the Impasse Neutral to follow in selecting the more reasonable Final Offer.

The amended copy of PLRA presented to the Impasse Neutral was extremely edited with single and double underlining, and single and double parentheses, which denoted language added at various times and the language deleted. Thus making it very difficult to read intelligently. To over come that difficulty, the text is set out below in 12 sequential steps without harming the intent of PLRA:

The Impasse Neutral must first evaluate and give the highest priority to the ability of the County to pay for additional short-term and long-term expenditures by considering:

- 1) the limits on the County's ability to raise taxes under State law and the County Charter;
- 2) the added burden on County taxpayers, if any, resulting from increases in revenues needed to fund a Final Offer; and
- 3) the County's ability to continue to provide all public service.

After evaluating the County's ability to pay based on the 1, 2 and 3 above, the impasse neutral may only consider the following in making a decision:

- 4) the interest and welfare of County taxpayers and service recipients;
- 5) past collective bargaining contracts between the parties, including the bargaining history that lead to each contract;
- 6) a comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland;
- 7) a comparison of wages, hours, benefits and conditions of employment of other Montgomery County employees;
- 8) wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County.

The Impasse Neutral must:

- 9) not compromise or alter the final offer that he or she selects;
- 10) select an offer based on the contents of that offer;
- 11) not consider or receive any evidence or argument concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the impasse neutral;
- 12) consider all previously agreed on items integrated with the specific dispute items to determine the single most reasonable offer.

The 12 items listed above are the PLRA language in the sequence as it appears in the PLRA. The numbering will facilitate easy referencing.

The Issue

The parties have placed before the Impasse Neutral a single issue, which is described as Cash Compensation for police officers covered by the FOP collective bargaining agreement, pursuant to the limited re-opener provision of the MOA that the parties mutually agreed upon in June 2010.

The Parties' Final Offers

The parties' Final Offers are provided below exactly as submitted, including strike-outs and emphasis bolding.

County Final Offer

Article 5 Tech Pay

Section C. Multilingual Pay Differential

3. Compensation. Compensation is determined by the officer's certified language level. Compensation is paid for all hours actually worked during a pay period. Officers certified at the basic skill level will receive one dollar per hour for all hours actually worked. Officers certified at the advanced skill level will receive two dollars per hour for all hours actually worked.

Certified Officers will indicate on their time sheets the multilingual skill code ML1 for Basic Skill certification, and ML2 for Advanced Skill certification.

4. Overtime. Certified officers will be paid overtime on the multilingual differential only for use of the skill during hours subject to overtime pay, ie. in excess of the regular workday or workweek.

5. Transfer. It is recognized that once an employee is designated in a skill level, he/she may be transferred to an assignment where the skill is needed.

6. For the duration of this agreement, no new officers will be tested for entrance into the multilingual program. In the event that a bargaining unit member leaves the multilingual program during the term of this agreement, the Employer, based upon operational need, may elect to allow a new bargaining unit member into the program to fill the vacant skill set.

Article 28 Service Increments

Section H. Longevity. Effective July 1, 1999, a longevity step will be added to the pay plan at the beginning of year 21 (after 20 years of completed service) equal to a three and one-half percent increase. **Effective July 1, 2011, there will be no new movement to the longevity step of the duration of this agreement.**

Add as new Section I – Effective July 1, 2011, service increments will be suspended for the duration of this agreement for all qualified bargaining unit members.

Article 31 Reopener

Section F. Reopener Matters

Second Year. Reopen for bargaining in the first year of the agreement for 2nd year of the contract on or before November 1, 2010 with timetable and impasse procedures set forth in PLRA, Section 33-81 on the following subjects:

1. Cash Compensation for FY 12
2. Whether a third year with a reopener on cash compensation will be added.

The County proposes not to extend the current agreement for a third year. This effectively ends the current agreement on June 30, 2012 as noted in the County proposal for contract duration in Article 47.

Article 36 Wages

Section A, Wages. Effective July 1, 2007, the salary schedule shall be increased by adding \$3,151 at Step 0, year 1 with increments and promotions for all other steps and pay grades calculated from the new Step 0, Year 1 basis. Increments and longevity shall continue to be calculated as required by Article 28. The percentage increases upon promotion shall continue (up to the maximum for each rank) to be: 5% between PO I and PO II; 5% between PO II and PO III; 5% between PO III and MPO; 10% between MPO and Sergeant; and, subject to Section D, *infra*, 5% between POC and POI. (Appendix T)

~~Effective the first full pay period following July 1, 2008, each unit member shall receive a wage increase of four (4) percent. Effective the first full pay period following July 1, 2009, each unit member shall receive a wage increase of four and one quarter (4.25) percent.~~
Effective the first full pay period following July 1, 2011, each unit member shall receive a wage reduction of five and one half (5.5) percent. Any previously postponed GWA will not be paid in FY12 or any future fiscal year.

Article 47 Duration of Contract

This agreement shall become effective on July 1, 2010 and terminate on June 30, 2012 unless extended to June 30, 2013 pursuant to Article 31 Reopener.

FOP Final Offer

Article 5 Tech Pay

Section C. Multilingual Pay Differential.

Add a new sub-section:

6. For FY12, at the County's option, no new officers will be tested for entry in to the Multilingual program.

Article 28 Service Increments

Add a new section to Article 28:

Section I. FY12 Increment and Longevity Step Increases. For FY 12 only, qualified unit members shall continue to defer one (1) 3.5% step. Qualified unit members shall receive one (1) 3.5% step on their service increment date. Increment and Longevity steps will not be paid if not funded by the County Council.

Article 31 Reopener

Section F. Reopener Matters.

Second Year. Reopen for bargaining in the first year of the agreement 2nd year of the contract on or before November 1, 2010 with timetable and impasse procedures set forth in PLRA, Section 33-81 on the following subjects:

1. Cash Compensation for FY 12
2. Whether a third year with a reopener on cash compensation will be added.

~~Third Year. Reopen for bargaining in the second year of the agreement for 3rd year of the contract on or before November 1, 2011 with timetable and impasse procedures set forth in PLRA, Section 33-81 on the subject of Cash Compensation for FY 13.~~

~~If the parties have not reached agreement by January 20 2011, an impasse shall be deemed to exist, and the impasse procedure provided in PLRA Section 33-81 shall be implemented.~~

Article 36 Wages

Section A. Wages. Effective July 1, 2007, the salary schedule shall be increased by adding \$3,151 at Step 0, Year 1 with increments and promotions for all other steps and pay grades calculated from the new Step 0, Year 1 basis. Increments and longevity shall continue to be calculated as required by Article 28. The percentage increase upon promotion shall continue (up to the maximum for each rank) to be: 5% between PO1 and PO11; 5% PO11 and PO111; 5% between PO111 and MPO; 10% between MPO and Sergeant; and, subject to Section D, infra, 5% between POC and PO1. The four and one quarter (4.25) percent wage increase scheduled to take effect in the first full pay period following July 1, 2009 shall be postponed, and shall not be effective during fiscal years 2010, 2011 and 2012.

Article 47 Duration of Contract

This agreement shall become effective on July 1, 2010 and terminate on June 30, 2012, ~~unless extended to June 30, 2013 pursuant to Article 31 Reopener.~~

Although not part of this Final Offer, FOP Lodge 35 offers the Employer the following:

Article 36 Wages

Section F. Lateral Entry

3. Notwithstanding the provisions of Section F, for employees hired during Fiscal Years 2011 and 2012, the County at its option may suspend in Fiscal Years 2011 and 2012 only, the requirement that within-grade advancement will be based on one additional 3.5 percent step for each year of qualifying experience.

Discussion and Evaluation of Parties Positions

As cited above, the Impasse Neutral must first evaluate and give the highest priority to the County's ability to pay for additional short and long term expenditures by considering three topics. The parties did not agree on which short and long term expenditures the Impasse Neutral must consider in making a decision. The FOP believes that only expenditures related to the parties' Final Offers are to be considered. The County believes that the Impasse Neutral must consider all expenses of the County.

The PLRA language is not clear on which interpretation is correct. However, of the three topics to consider in assessing expenditures (ability to raise taxes, burden on tax payers, and ability to continue public services) none mentions all County expenditures. One topic (burden on taxpayers) refers to "revenues needed to fund a final offer". Since there is no reference to all County expenditures, this Impasse Neutral will focus only on the expenditures caused by Final Offers.

The FOP suggested that if the Impasse Neutral concludes that only last offer expenditures need be taken into account, the Impasse Neutral might move beyond these first three requirements of the PLRA, because the FOP Final Offer involves no cost increase. In testimony and exhibits, the County reported on their effort to cost-out both final offers. They

found that the County Final Offer had a negative cost, or savings of \$6,729,690, and the FOP Final Offer cost \$1,438,560, and with an annualized cost of \$2,124, 430.

County Ability to Pay Additional Costs (Items 1, 2, 3)

The Impasse Neutral must first evaluate and give the highest priority to the ability of the County to pay for additional short-term and long-term expenditures by considering:

1. the limits on the County's ability to raise taxes under State law and the County Charter;
2. the added burden on County taxpayers, if any, resulting from increases in revenues needed to fund a final offer; and
3. the County's ability to continue to provide all public service.

The County's first witness, David Platt, Chief of Commerce in the Department of Finance testified that the County's ability to raise real property tax is limited to the cost of living in the previous year. Since the 2010 the cost of living was 1.70%, the County revenue from real property tax may not exceed 1.70%. The cost of living in 2009 was 0.23%, and in 2008 it was 4.52%.

In FOP cross examination, the witness agreed that the outlook for inflation is positive and that it will impact real property tax revenue positively. Also on cross, the witness admitted the stock market is on the rise, another positive factor.

The FOP argued that Montgomery County's economic data picture is better than the national data presented in County Exhibit 1. For example County unemployment at 5.5% is just over half National unemployment rate. Therefore, the County rate could almost be considered full employment.

Also based on data in County Exhibit 1, the FOP pointed out that County estimates of income taxes and real property taxes show an increase in tax income of \$122 million in 2012 over 2011 or a 3.3% increase. These numbers are a clear sign of the beginning of a recovery from recession.

The County pointed out that the initial estimates the County made on 2011 and 2012 tax income were made when the 2010 budget was approved. Then nine months later in December 2010, new estimate were made for 2011 and 2012. The December 2010 estimates lowered the expected tax income by \$85 million for 2011, and \$73.8 million for 2012.

Therefore, the new tax income estimate for those two years (2011 and 2012) was lowered by nearly \$160. million. These new, greatly lower, tax income estimates, following a nine month period during which signs were pointing to economic recovery, seem inconsistent with County data offered in Co. Exh. No. 1. at p. 13. In an Economic Indicator Dashboard on page 13, the County presents eight indicators with four indicating upward movement, three indicators holding steady, and only one moving down.

The County explanation that "draw downs" justify the December 2010 new lower tax income estimates is unconvincing.

The next County witness, Joseph Beach, was the Director of the Office of Management and Budget. He explained that a budget gap of 300 million dollars presented an over whelming challenge to the County, its citizens, and services. The budget gap is the difference between total projected resources and the total projected uses.

FOP argued that the budget gap is exaggerated by the County confusing wants and needs, and its failure to set priorities based on real needs. Some building programs are ill advised in the face of budget gaps. Money should be shifted to needs, while wants should be deferred. The counter to that was the operating budget is "not a list of what we would like to do or a wish list. It's what we feel by law or a policy we're obligated to do as well."

The witness explained that the capital budget is not available to supplement the operating budget, since expenditures from the former can only be used to create assets such as buildings and other real property.

In cross examination, the FOP elicited the confirmation that Operating Budget and the Capital Budget, while separate, have movement of money between them. They are not wholly discrete, they interact and affect one another. The example discussed was 73.4 million dollars taken from the Operating Budget and placed in the Capital Budget for capital expenditures, on debt service for example.

Also in cross examination, the FOP elicited the fact that new revenues in 2012 are anticipated to be 5.13% higher than they were in 2008, a significant increase by next year compared with the year the recession started.

The witness testified that the FOP assumption that the County Government can control the school board in terms of teacher wages and other specifics is simply wrong. State law limits County Government influence with concepts such "maintenance of effort." The Government can seek waivers from the State Board of Education to save some costs, but that path is never assured.

When the County does not fund the MCPS at the "maintenance of effort" level, the State will penalize the County by withholding funds that would otherwise be provided to the County. To avoid that the County can seek a waiver from the State and avoid the penalty. While getting a waiver is not a sure thing, it can provides significant savings to the County. It could be as much as 100 million dollars. The County plans to request a waiver for 2012 once they fail to meet the "maintenance of effort." If the waiver is granted for 2012, the County would not need to spend \$82 million on "maintenance of effort."

The burden on tax payers is already very heavy and the property tax constitutes 38% of the County's tax revenue. There is a legal limit on tax increases, as well as a practical reluctance to raising the property tax rate under present circumstances, in light of tight family and business budgets, which add to taxpayers stress.

The level of State aid to local government is questionable given the 1.5 billion dollar State shortfall anticipated. The budget problem the County faces is not a cyclical problem; it is a structural budget problem, which requires bringing down long term continuing cost increases, such as labor and staffing costs. So wage and benefit reductions are part of the County's strategy to get the budget under control. The problem is that over the past ten years labor costs have gotten excessive and must be reduced. While labor cost are the primary problem because they constitute 80% of the operating budget, other cost such as debt service also must be brought under control.

The County has done and will do other things to bring down spending, none of which is easy. Hiring freeze of past years, and wage freezes, furloughs, shortened hours in libraries and recreation centers, cut back on maintenance for facilities, roads and transit have been instituted. And there are more to come.

The FOP believes they have done their part to help the County by repeatedly deferring negotiated pay increases.

Reductions made in 2011 will not be restored, they are the new base, which will be cut farther in 2012. Uncontrollable costs are another problem that makes the County's job of balancing the budget that much harder. For example, K-12 and community college enrollment increases, energy/fuel costs and State shifting costs to local government.

On the latter point of the State shifting costs to local government, the FOP pointed out that no such idea was in the Governor's budget

Increasing real property tax would requires a unanimous vote of the County Council, which seems very unlikely.

The FOP raised questions about the reserve fund in which the County was placing 106.8 million dollars. The witness explained that the County was following its reserve policy, which is to cover costs that are not provided for in other sections of the budget. There are serious risks in not having sufficient reserves set aside. A strong reserve is a good management practice.

The third County Witness, Alexander Espinoza, from the office of management and budget, is the person who testified on the costing of the two Final Offers, discussed above. In cross examining the witness's costing of the FOP Final Offer, the FOP attempted to establish that pay increases provided in the labor agreement, which were deferred by the FOP, and therefore not paid to police officers will be a savings for the County. The witness answered that it would be a cost to the County, but suggesting it wasn't a saving. Cross examination focused on whether lower costs were reflected in the costing process by the fact that retiring police officers are replaced by new officers who are paid lower salaries than the retiree they replaced. A series of witness responses were inconclusive.

The fifth witness for the FOP, Amy McCarthy, is a private economist. During her testimony, she used FOP Exhibit 3 to illustrate her testimony. The chart on page 19 shows the County

projection of huge budget gaps for the years 2007 through 2011. Then as each budget years ends, the County achieves a balanced budget. She testified that the County uses these exaggerated budget gap projections to suggest that a particular year will end in a huge debt, but it never does. Her chart suggests that 2011 and 2012 are likely to end the same way. The County has year after year managed to convert what appears to be a huge budget gap into a balanced budget. Repeatedly, the County has exaggerated future expenditures to create the impression of a huge budget gap. This year, they are using the exaggerated budget gap to cut six million dollars from police officers pay.

The chart on page 16 shows various tax rates of all the counties in Maryland. Montgomery County's property rate is substantially below the other jurisdictions, 25% below the average rate. This is caused by the cap on the County's tax rate. The chart also shows that the County's utilities tax and recordation tax are below other jurisdictions' tax rates.

Observations on the County's Ability to Pay (Items 1,2, 3)

Is the huge projected budget gap based on too little tax income or too large anticipated expenditures? The cap on taxes is real, but the size of anticipated expenditures is likely to be smaller, based on FOP exhibit 3.

The County is relatively better off economically than the national economy.

FOP has highlighted some sources of available funds for police compensation. For example a waiver of the maintenance of effort in 2012, raising the utility and recordation taxes.

The County has already made a number of service reductions, which probably has made taxpaying citizens unhappy. But more cuts may be necessary. The County's AAA Bond rating shows the County numbers are sound.

Wage Comparisons (Items 6, 7, 8)

The County's fourth witness, Michael Nodol, is a consultant on finance and management for government organizations. The witness conducted a 79 page study on the bargaining unit, area police compensation, wage trends, economic downturn, recruiting and retention, and the County Final Offer.

FOP cross examination focus only on recruiting and retention. Nothing else in the report was challenged. A brief summary of some key findings:

- Police compensation is among the highest in the region.
- County ranks relatively lower in the region, near mid point on per capita income, median family income, employment level, job creating in past 3 years, owner housing cost, recent home sale price.
- Big wage gains since 2007, move County from 5th place to 1st.
- More than 3% of local job base eroded.
- 5.5% wage reduction needed in FY 2012 to return to a new normal.

- With wage reduction police will still rank number 2 in region.
- Wage reduction will reduce the need for layoffs and service cuts.

Observations on Wage Comparisons:

Compared with other nearby jurisdictions, the County police enjoys high compensation, while the community they serve has lost some of its prosperous status.

Comparison of Two Final Offers (Items 9, 10, 12)

Below is a side by side comparison of the five articles addressed in the Final Offers:

Article 5 Tech Pay:

Both Offers recognize the need for limiting the expansion of the multilingual program during the term of this agreement.

Article 28 Service Increments:

The County proposes that effective July 1, 2011, for the duration of the agreement, service increments will be suspended and no new movement to the longevity steps will occur.

The FOP proposes to continue to defer one 3.5% step during FY12, and qualified members to get 3.5% on their service increment date.

Article 31 Reopener

The two Offers are identical, except that the County proposes the current agreement end June 30, 2012. This does not represent a disagreement since the parties in Article 47 below agree on date as the end of their current agreement.

Article 36 Wages:

The County proposes a 5.5% wage reduction beginning in July 2011. The County proposes that "any previously postponed GWA will not be paid in FY12 or any future fiscal year."

The FOP proposes to continue to defer the previously deferred 4.25% through 2012.

The FOP included an offer to the County that they labeled "not part of the Final Offer". It will be ignored by the Impasse Neutral.

Article 47 Duration of Contract:

The two Offers propose that their current agreement terminate on June 30, 2012.

Observations on the Final Offers (items 9 and 10):

The offers are close to agreement or in agreement on 3 of the 5 issues. On the remaining two, the offers are far apart. The FOP offer shows flexibility and is consistent with FOP behavior during the last two years as it continued to defer benefits provided in the parties' agreement. Consistent with its cost cutting efforts and its claim of a seriously out-of-balance budget, the County proposes a significant reduction in wages. Either final Offer will constitute a significant cost to the County. The FOP has argued that either offer will have a negative impact on police officers.

Award

Based on the above discussion, analysis and observations, the Impasse Neutral finds the FOP Final Offer, on the whole, the more reasonable of the two offers.

Jerome T. Barrett, Impasse Neutral

Falls Church, Virginia

February 18, 2011

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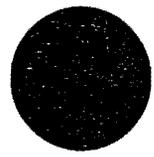
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

061725

Isiah Leggett
County Executive

MEMORANDUM

April 1, 2011



TO: Valerie Ervin, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Memorandum of Agreement between the County and IAFF

I have attached for the Council's review the agreement resulting from the recent collective bargaining negotiations between the Montgomery County Government and the Montgomery County Career Fire Fighters Association, International Association of Fire Fighters, Local 1664 (IAFF). The agreement is the product of an Interest Arbitration Decision by arbitrator M. David Vaughn in favor of the IAFF. A copy of the Opinion and Award is attached. The agreement reflects the changes that will be made to the existing Collective Bargaining Agreement effective July 1, 2011 through June 30, 2013. I have also attached a summary of the changes which denotes if a contract item is not funded in my proposed budget. The fiscal impact statement has been transmitted to Council as a separate document by the Office of Management and Budget.

cc: Joseph Adler, Director, Office of Human Resources
Joseph Beach, Director, Office of Management and Budget
Richard Bowers, Fire Chief, Fire and Rescue Services
Marc Hansen, County Attorney, Office of the County Attorney

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2011 APR -5 AM 10:11

Summary of Proposed Labor Agreement with IAFF Effective FY 2012

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires Regulation Change	Notes
1.	2.7/LFRD/ Corporation Activities	Bargaining unit members will not be required to participate in LFRD/Corporation activities	No	No	No	No	
2.	9.D/Court Time	Unit members whose presence at a court or trial proceeding is necessary but not related to work will be using own leave	No	No	No	No	
3.	9.K/Organ Donor Leave	<p>Bargaining unit member who donates bone marrow will receive 7 days of organ donor leave; Members who donate an organ will receive up to 30 days of leave.</p> <p>Leave must be approved by the Fire Chief and must be granted with any additional leave the employee is entitled to</p> <p>Medical documentation must be provided</p>	No	Yes	No	Regulations will be changed to apply this to non-bargaining unit employees as well	Fiscal impact indeterminate
4.	9.L/Returning of Military Family	A member whose family returns to the US from a foreign military deployment may use paid leave above the cap for two consecutive work shifts; must commence no later than five days after the family members return	No	No	No	No	
5.	10.2/ Expiration of Disability Leave	<p>At least 30 days prior to the end of disability leave, the Employer must notify the employee of the end date of disability pay and OHR benefits contact information</p> <p>Notification must be sent through certified mail with a copy to the Union</p> <p>No disability leave shall terminate without at least 30 days notice</p>	No	No	No	No	

Summary of Proposed Labor Agreement with IAFF for FY 2012 and FY 2013

Page 2

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires Regulation Change	Notes
6.	14.1/Overtime Policy	<p>Employees will record actual overtime work</p> <p>Employees will only be notified when they have reach 75% of their total County salary in overtime</p>	No	No	No	No	
7.	14.1/Overtime Restriction	<p>An employee who cancels an overtime assignment twice with less than 10 days notice within a 90 day period will be restricted from voluntary overtime for 30 consecutive days</p> <p>The Fire Chief may reasonably excuse these cancellations</p> <p>Does not apply to overtime assigned after 2100 hours the evening prior to the start of the shift</p>	No	No	No	No	
8.	14.3/Committee Assignments	<p>Members appointed to joint committees by the Union President will be compensated according to 14.1</p>	No	No	No	No	

Summary of Proposed Labor Agreement with IAFF for FY 2012 and FY 2013

Page 3

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires Regulation Change	Notes
9.	14.4/Involuntary Overtime	<p>Definition: employee did not sign up to work voluntary overtime and ordered to staff on-duty at the end of shift due to staffing shortage</p> <p>Employees held after end of shift working an incident are not on involuntary overtime</p> <p>Before assigning involuntary overtime, an email must be sent to all staff informing them that involuntary overtime is necessary and the hours involved and station officers will advise on-duty personnel that involuntary overtime exists</p> <p>Involuntary overtime will be assigned to the least senior person that meets the qualifications; provided that the most senior person may elect to accept the involuntary overtime</p> <p>Only in extenuating circumstances will a member be required to work involuntary overtime more than once during any 45 calendar day period</p>	No	No	No	No	
10.	19.1/Wage Increase	The 4% GWA for FY 10 and the 3.5% GWA for FY 11 will be postponed and will not be effective in FY 12	No	Yes	No	No	<p>CE's proposed budget does not include pay improvements for any County employees</p> <p>See Fiscal Impact Statement</p>

Summary of Proposed Labor Agreement with IAFF for FY 2012 and FY 2013

Page 4

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires Regulation Change	Notes
11.	19.1/Wage Increase	The 3.5% longevity step for FY 10 and FY 11 will not be effective in FY 12; No LS2 for FY 12	No	Yes	No	No	CE's proposed budget does not include pay improvements for any County employees See Fiscal Impact Statement
12.	19.2/Salary Schedule	A 3.5% step addition for FY 11 will be postponed and will not be effective in FY 12	No	Yes	No	No	CE's proposed budget does not include pay improvements for any County employees See Fiscal Impact Statement
13.	20.2/Health Benefits	Provides for no change in County 80 percent premium contribution for benefit plans included in 20.2	Yes	Yes	No	No	CE's proposed budget recommends increasing employee share of insurance premiums for benefit plans other than health from 20% to at least 30% and adding salary based tiers.
14.	20.3/Employee Benefits Committee	1 additional union representative and 1 additional management representative Representatives represented by Co-Chair Committee will examine cost containment measures and present by 10/31/2011	No	No	No	No	

Summary of Proposed Labor Agreement with IAFF for FY 2012 and FY 2013

Page 5

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires Regulation Change	Notes
15.	20.4/Other Benefits	Provides for no change in County 80 percent premium contribution for benefit plans included in 20.4	Yes	Yes	No	No	CE's proposed budget recommends increasing employee share of insurance premiums for benefit plans other than health from 20% to at least 30% and adding salary based tiers
16.	20.9/Prescription Drug Plan	Provides no change in the prescription drug plan included in 20.9	Yes	Yes	No	No	CE's proposed budget recommends increasing employee share of insurance premiums for benefit plans other than health from 20% to at least 30% and adding salary based tiers
17.	22L/Flu Shots	<p>Employees will be informed within 60 days of the availability of flu shots and will notify the County within 21 days of the shots being available if they wish to receive one</p> <p>If an employee requests a flu shot and then declines he/she will reimburse the County up to \$10</p> <p>Any surplus doses may be made available to other bargaining unit members</p>	No	No	No	No	
18.	22T/Retirement Disability	A copy of the Disability Review panel report and any other personnel information necessary for Social Security Disability Benefits will be provided to the employee when they sign retirement paperwork	No	No	No	No	

Summary of Proposed Labor Agreement with IAFF for FY 2012 and FY 2013

Page 6

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires Regulation Change	Notes
19.	22.2/Notice and Opportunity	Change "safety" to "MCFRS" Any promotional bulletins will be forward to the Union president no less than 5 days prior to posting for comments	No	No	No	No	
20.	23.1/Operations	Increase early relief to 4 hours	No	No	No	No	
21.	28.7/Voluntary Transfers	Voluntary transfer request will be submitted electronically A receipt and supervisory comments will be sent to the employee Division chief will notify if request will be granted	No	No	No	No	
22.	29.2/Reference Materials	Reference/study materials will be made available 120 days prior to the exam	No	No	No	No	
23.	35.6/Workplace Safety and Efficiency of Operations	Sleeping, dining/cooking, showers, locker rooms, and living areas at worksites in which bargaining members are assigned will be restricted to County employees and officers or LFRD members Persons other than those above may be in these areas during non-rest hours if only escorted by an approved person Authorized contractors are permitted if there for assigned work	No	No	No	No	

Summary of Proposed Labor Agreement with IAFF for FY 2012 and FY 2013

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No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires Regulation Change	Notes
24.	35.7 Critical Incident Stress Management	<p>Employees of the CISM Team will be allowed to attend trainings and meetings and afforded the time off</p> <p>If the employee attends training on normal day off, he will receive 1 1/2 salary</p> <p>Employer will reimburse registration fees</p> <p>In station training will also be made available</p>	No	Yes	No	No	See Fiscal Impact Statement
25.	38/Grievance Procedure	<p>The Union may initiate a grievance at the second step directly to the OHR Director only</p> <p>The Fire Chief and Union will meet within 14 calendar days of the filing</p> <p>OHR Director and Union will meet within 14 calendar days after appealing to Step II and will issue a response within 30 days</p> <p>Only the Union may appeal to arbitration and must do so within 30 calendar days after receiving OHR response</p> <p>The arbitrator must be contacted within 21 days after the Union refers the grievance to arbitration and a date must be scheduled within 45 calendar days</p> <p>If arbitrator cannot schedule within 45 days, the next arbitrator on panel will be selected</p>	No	No	No	No	

Summary of Proposed Labor Agreement with IAFF for FY 2012 and FY 2013

Page 8

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires Regulation Change	Notes
26.	41/Printing of Contract	The County will print 300 copies of the contract to be provided to the Union An email containing a link to an electronic copy of the contract will be sent to all bargaining unit employees	No	No	No	No	See Fiscal Impact Statement
27.	46.1/Uniform Footwear	The value of uniform footwear may be applied to optional footwear in accordance with the Department policy	No	No	No	No	
28.	46.4/Class C Uniform	Class C Uniform shall be in accordance with Departmental policy No. 06-09	No	No	No	No	
29.	50/Duration of Agreement	Two year contract: July 1, 2011 through June 30, 2013 Reopener to begin by 11/1/2011	No	No	No	No	
30.	51/Pensions	Provides for no changes to Group G retirement contributions	Yes	Yes	No	No	CE's proposed budget recommends increasing employee contribution by 2% of salary.
31.	52/Paramedic Certification	Bargaining unit members may be given preferential consideration for paramedic positions	No	No	No	No	
32.	55/ Postponement of Service Increments	The service increments due to employees in FY 11 and FY 12 will continue to be postponed Employees will continue to receive service credit	No	No	No	No	

Summary of Proposed Labor Agreement with IAFF for FY 2012 and FY 2013

Page 9

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires Regulation Change	Notes
33.	61/Emergency Medical Services Quality Improvement	<p>Article title changed to Emergency Medical Services Quality Improvement</p> <p>Employees required to submit a statement for EMS complaint or QA inquiry will be notified of the date and event number of the incident and the general nature of the complaint</p> <p>Employees will be able to request to review the document regarding complaints/inquiries being reviewed by the Medical Review Committee</p> <p>If the recommendation is to remove credentials or County status, the employee, along with the Union, will be able to present a case prior to deliberations</p> <p>This article does not supersede the authority of the EMS Medical Director under COMAR Title 30</p>	No	No	No	No	
34.	Appendix IV-A	Remove "transfer"	No	No	No	No	

Summary of Proposed Labor Agreement with IAFF for FY 2012 and FY 2013

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No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Requires Regulation Change	Notes
35.	Appendix V	<p>Add Lieutenant classification</p> <p>Eligible for working out of class compensation for a 6 month period in which the employee worked the higher class for at least 50% of the time</p> <p>Once the 50% threshold is met, the employee will receive 5% of base salary for hours worked at higher class</p> <p>The thresholds are: 2496 hour/year schedule equals 624 hours; 2184 hour/year schedule equals 546 hours; and 2080 hour/year schedule equals 520 hours.</p>	No	Yes	No	No	See Fiscal Impact Statement
36.	Appendix VII	Removed from the contract	No	No	No	No	

**MEMORANDUM OF AGREEMENT
BETWEEN
THE MONTGOMERY COUNTY GOVERNMENT
AND THE
MONTGOMERY COUNTY CAREER FIRE FIGHTERS ASSOCIATION,
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1664**

The Montgomery County Government (Employer) and the Montgomery County Career Fire Fighters, International Association of Fire Fighters, Local 1664 (Union), agree that their collective bargaining agreement effective July 1, 2008, through June 30, 2011, is extended in full force and effect for the one-year term July, 1 2011, through June 30, 2012, is subject to the amendments shown on the following pages.

Please use the key below when reading this agreement:

<u>Underlining</u>	<i>Added to existing agreement.</i>
[Single boldface brackets]	<i>Deleted from existing agreement.</i>
* * *	<i>Existing language unchanged by parties.</i>

* * *

ARTICLE 2 - ORGANIZATIONAL SECURITY

* * *

Section 2.7 Non-Participation in Volunteer LFRD/Corporation Activities

Bargaining unit employees shall not participate in volunteer LFRD/Corporation activities prohibited by any law, rule, or regulation; nor shall they be required to participate in volunteer LFRD/Corporation internal operations, fund raising activities, board or membership meetings.

* * *

ARTICLE 9 – ADMINISTRATIVE LEAVE

* * *

- D. An employee who is called to jury service, or who is subpoenaed as a witness in a civil or criminal court case or in an administrative agency hearing. Administrative leave will not be granted, however, to an employee who is subpoenaed to appear in a court or administrative case in which the employee is a party, unless the case is related to the employee's official duties. In the event an employee is [called to court] commanded to appear at a court or administrative agency proceeding (e.g., trials, hearings or discovery

proceedings) for a case [in which the employee is a party] that is not related to the employee's official duties, or is a party to the case and whose presence is necessary at such proceeding, the employee shall be permitted to use his/her own leave but the use of this leave will not count toward the number of leave slots (annual or casual) in Section 6.13 of the agreement.

* * *

K. A full-time or part-time employee may use organ donor leave with pay for up to 7 days in any 12-month period to serve as a bone marrow donor; and up to 30 days in a 12-month period to serve as an organ donor. Organ donor leave must be approved by the MCFRS Fire Chief. Organ donor leave must be granted in addition to any annual leave, sick leave, personal days, or paid time off that the employee is otherwise entitled to. The employee must provide medical documentation of the bone marrow or organ donation before organ donor leave is approved.

L. An employee whose family member (i.e., spouse, child, brother or sister) returns to the United States following military deployment to a foreign location shall be granted, upon request, paid accrued leave above the cap for two consecutive work shifts. Such leave shall commence no later than five calendar days following the relative's return, and must be granted in addition to any annual leave, sick leave, personal days or any other paid time off that the employee is entitled to.

* * *

ARTICLE 10 - DISABILITY LEAVE

* * *

Section 10.2 Disability Leave

* * *

D. Advance Notification of Expiration of Disability Leave

Prior to the expiration of an employee's Disability Leave period, the Employer shall provide written notification to the employee which fully informs him/her of: (1) the date that his/her disability leave expires and disability pay ends; and (2) contact information for the Office of Human Resources to allow employees to schedule one on one sessions concerning continuation of pay and benefits and for retirement. The Employer shall provide such written notification no more than sixty (60) days and no less than thirty (30) days prior to the expiration of the employee's Disability Leave, and it shall be delivered to each employee by certified mail or registered mail to the employee's home address listed in the Employer's records. A copy of such written notification shall be

provided to the Union President at the same time that it is mailed to the employee. No employee's Disability Leave (and associated pay and benefits) shall terminate upon less than thirty (30) days advance written notification as provided herein.

* * *

ARTICLE 14 - OVERTIME

Section 14.1 Policy

* * *

- B. Overtime is paid at the monetary rate of 1 ½ times the employee's gross hourly rate of pay (including pay differentials. Upon request, bargaining unit employees [may] shall be granted compensatory time at 1 ½ times the excess hours worked in lieu of overtime pay.
- C. Overtime work will be compensated at the rate identified in subsection (B), above. Employees will record actual overtime worked. [,and in accordance with the following schedule for partial hours, until the date upon which the Employer implements the "electronic timekeeping technology" described below.
- under 7.50 minutes = no compensation
 - 7.50 minutes – 15 minutes = 15 minutes overtime compensation
 - over 15 minutes – 22.50 minutes = 15 minutes overtime compensation
 - 22.50 minutes – 30 minutes = 30 minutes overtime compensation
 - over 30 minutes - 37.50 minutes = 30 minutes overtime compensation
 - over 37.50 minutes – 45 minutes = 45 minutes overtime compensation
 - over 45 minutes – 52.50 minutes = 45 minutes overtime compensation
 - over 52.50 minutes – 60 minutes = 60 minutes overtime compensation,]

[During the term of this Agreement the Employer intends to implement electronic timekeeping technology. As a result, bargaining unit employees will no longer be required to round overtime to the nearest seven (7) minute and thirty (30) second increment. Employees will report actual overtime worked. Upon implementation of this technology, subsection C above, will no longer be operative. The Employer will provide sixty (60) calendar days notice to the Union prior to implementation of the technology.]

* * *

- H. The County shall maintain a single electronic application, database or other like system to track all overtime hours worked by bargaining unit employees. This application,

database, or other like system shall be the same system that is used by the County's schedulers to assign bargaining unit employees to worksites. The County shall ensure that all overtime hours worked, as reported on employees' timesheets, are entered in to this system within ten days of the end of the pay period. The County shall provide the Union with reports from this system or access to the system with the ability to create reports along with payroll reports showing all calendar year-to-date overtime worked by bargaining unit employees on a bi-weekly basis.

* * *

Employees will be notified by memorandum when they have earned overtime equal to [fifty (50) and] seventy five (75) percent of their total county salary. Employees will [also] be notified by memorandum that their ability to be assigned overtime is restricted when they have earned overtime equal to one hundred (100) percent of their total county salary.

* * *

I. Any employee who is notified of an overtime work assignment by 2100 hours the evening prior to the scheduled start of the overtime assignment and who then cancels the overtime assignment within ten (10) hours of the scheduled start time more than two (2) times within a ninety (90) day period may be restricted from working voluntary overtime assignments for thirty (30) consecutive calendar days. In the event an employee is placed on overtime restriction more than once in any twelve (12) consecutive month period, subsequent restriction periods during the remainder of the (12) consecutive month period will have duration of forty-five (45) consecutive calendar days.

Overtime that is canceled within the time frame identified in this Section may be excused by the MCFRS Division Chief of Operations, or designee, and not be deemed a cancellation that is subject to the above restriction(s). The standard for excusing an overtime cancellation shall be "reasonableness" (i.e.; reasonable person standard).

Upon completion of the applicable restriction period, the 90-day period shall start again.

This section shall not apply to overtime assigned by the Scheduling office after 2100 hours the evening prior to the start of the applicable shift.

* * *

Section 14.3 Committee Assignments

All bargaining unit members appointed to serve on a joint labor-management committee by the [Fire Chief or designee] Union President shall be compensated consistent with Section 14.1 of this

Article when required to attend a committee meeting on their day off except as otherwise provide for in this Agreement.

Section 14.4 Involuntary Overtime

- A. Involuntary Overtime is defined as hours worked by an employee under the following conditions:
1. The employee has not signed up to work voluntary overtime on a given day; and
 2. The employee has been ordered to remain on-duty following the end of the employee's scheduled work hours that day due to a staffing shortage.

However, employees who are held beyond the end of their scheduled work hours on incidents or who respond to incidents before or after their scheduled work hours are not considered to be working involuntary overtime.

- B. When it is apparent that overtime hiring will be required on a given day, and there is an insufficient number of bargaining unit employees who have previously signed up to work overtime that day on a voluntary basis, the following steps must be taken before any bargaining unit employee is assigned to work involuntary overtime:
1. A Department official will send an email to "#frs.DFRS" explaining that personnel may be assigned involuntary overtime and the work hours involved.
 2. Each station officer will be expressly informed to advise on-duty personnel in his/her station that the potential for involuntary overtime exists.

- C. Following the steps in subsection B above, if a sufficient number of bargaining unit employees have not elected to work overtime on a voluntary basis, involuntary overtime shall be assigned in the following manner:

The employee currently in the station with the least seniority that meets the qualifications to fill the position will be assigned to work the overtime hours; provided, however, that a more senior employee currently in the station may choose to accept the overtime assignment, and in so doing, will be considered to be working involuntary overtime.

- D. Except when there are extenuating circumstances, no bargaining unit employee shall be required to work involuntary overtime on more than one occasion during any forty-five (45) consecutive calendar day period.

* * *

ARTICLE 19 - WAGES

* * *

Section 19.1 Wage Increase

* * *

- C. Effective the first full pay period on or after July 1, 2009, the base salary for all bargaining unit members shall be increased by 4 percent. This 4 percent wage increase which was to be effective the first full pay period on or after July 1, 2009 and which was postponed through a May 2009 Memorandum of Agreement between the parties shall continue to be postponed during FY 2012.
- D. Effective the first full pay period on or after July 1, 2009, add new longevity step at year 28 (LS2 - 3.5%). No bargaining unit employee otherwise eligible for a 3.5% "LS2" increase to their base pay shall receive such increase in FY 2012. However, no bargaining unit employee shall lose service credit for purposes of progression to LS2.
- E. Effective the first full pay period on or after July 1, 2010, the base salary for all bargaining unit members shall be increased by 3.5 percent. This 3.5 percent wage increase, which the County Council elected not to fund in FY 2011, shall be postponed during FY 2012.

Section 19.2 Salary Schedule

* * *

- C. Bargaining unit employees shall progress to Step LS on the uniform pay plan upon completion of 20 years of service as a County merit System employee. No bargaining unit employee otherwise eligible for a 3.5% "LS" increase to their base pay shall receive such increase in FY 2012. However, no bargaining unit employee shall lose service credit for purposes of progression to Step LS.
- D. Effective at the beginning of the first full pay period beginning on or after July 1, 2010, a Step P will be added at a rate 3.5% greater than the current Step O. All employees will then receive one service increment increase. The existing Step A will then be removed from the schedule, and the remaining 15 steps will be re-lettered A through O. This pay plan adjustment, which the County Council elected not to fund in FY 2011, shall be postponed during FY 2012.

* * *

ARTICLE 20 - INSURANCE BENEFITS COVERAGE AND PREMIUMS

* * *

Section 20.3 Employee Benefits Committee

- A. The parties hereby jointly establish an Employee Benefits Committee for the purpose of maintaining high quality employee benefits, efficiently provided to County employees at a reasonable cost and to study benefit cost containment programs. The Committee shall consist of [two (2)] three (3) members appointed by the County, and [two (2)] three (3) members appointed by the Union. The Union representatives on this committee shall be considered to be on detail if working during these meetings. Hour for hour compensatory time or pay at the employees' regular hourly rate shall be credited to union representatives who attend meetings on their day off. Either party may remove or replace its appointees at any time. In addition, either party may appoint one or more outside consultants (whose compensation shall be the responsibility of the appointing party) who shall be permitted to attend all Committee meetings and who shall advise the Committee members on subjects under Committee review. Upon request, either party shall promptly submit to the other party relevant information within a party's possession, custody or control for review by the other party and/or its consultant(s). [The Chair of the Committee will rotate each January 1 from a County designee to a Union designee, and vice versa each July 1. The initial Chair shall be a County designee.] The Union representatives and County representatives on the committee shall each appoint a Co-Chair of the committee from their respective groups.

The purposes and functions of the Employee Benefits Committee shall be to: a) review existing employee benefits and their provisions; and b) make findings and/or recommendations to the parties regarding [changes in employee benefits] cost containment measures. The Committee shall meet not less than [once] twice a month during the months of [February through mid-November] July 2011 through October 2011. [Meetings during the period of mid-November through January 31 may be scheduled upon mutual consent by the parties.] A quorum for conducting business shall consist of at least [one member] two members appointed by each party. On or before October 31, 2011, the Committee shall present written recommendations to the County Executive and the Union President.

- B. The parties agree that during the term of this Agreement the Benefits Committee [will] may review the following subjects as well as any other subjects the parties agree upon.

- Employee + 1 options
- Treatment Limits
- Medical spending accounts/employer funded
- Prospective retiree prescription and vision benefits
- New/different healthcare providers
- Healthcare provider accreditation

Prescription drug plan consolidation and co-pays
Dental and Orthodontic coverage

- [C. If the parties are unable to agree on the implementation of any recommendation, the appropriate statutory provisions concerning bargaining and impasse may be used only by joint agreement in order to resolve the dispute. Absent such agreement, either party may present proposals on any recommendation consistent with section 33-153(a) of the County Collective Bargaining Law. In the event the Employer reaches agreement with any other certified bargaining representative(s) on any recommendation, such agreement(s) shall not be binding on this bargaining unit.]
- [D. The parties agree to establish a joint committee consisting of an equal number of union representatives and employer representatives for the purposes of studying insurance cost saving measures regarding post-employment group insurance, including eligibility, premium share for employees hired on or after July 1, 2008, and coverage. The committee shall report to the parties before September 1, 2009.]

* * *

ARTICLE 22 - PREVAILING RIGHTS

* * *

- L. Hepatitis Vaccine Shots and annual flu shots at no cost to the employee if requested by the employee. Each year, employees will be informed, in writing, of the availability of flu shots at least sixty (60) days prior to their availability, and at that time employees will be requested to respond, by email or in writing, within 21 days of such notification if they wish to receive a flu shot. Any employee who indicates that he/she wishes to receive a flu shot and who subsequently declines to receive the shot may be required to reimburse the Employer for the cost of the dosage up to a maximum of ten dollars (\$10.00). The County shall have no obligation to provide flu shots to bargaining unit employees who do not respond to this notice. The County may, at its discretion, make any surplus doses available to bargaining unit employees. Tetanus shots at no cost to the employee will be available if requested at the time of the employee's regularly scheduled physical/annual pulmonary function test at the Occupational Medical Section;

* * *

- T. All bargaining unit employees who retire on disability retirement shall be provided a copy of the Disability Review Panel final report and any personnel information in the County's possession necessary to apply for Social Security Disability benefits at the time they sign their retirement paperwork.

* * *

Section 22.2 Notice and Opportunity to Submit Comments

- A. Prior to the implementation of any new or revised Directive, [Safety] MCFRS Bulletin, Policy, Procedure, Instruction relating to or affecting bargaining unit employees, the Employer shall provide the Union President, 1st Vice President, and 2nd Vice President with written, electronic notice and an opportunity to submit comments. If the Employer provides the Union with written, electronic notice and opportunity outside normal business hours (Monday through Friday, 7:00 am to 3:00pm), the electronically transmitted notices will be deemed received on the following business day. The employer will provide the Union written notice of its designee authorized to transmit documents for notice and opportunity.
- B. Such written notice shall be addressed to the President of the Union, and shall be sent to him by regular and electronic mail. Such written notice shall include an explanation and/or description of the new or revised Directive, [Safety] MCFRS Bulletin, Policy, Procedure or Instruction and the date on which the Employer intends to implement it.
- C. The Union shall have thirty (30) calendar days from the date upon which the President of the Union receives written notice to submit written comments or, if appropriate, proposals regarding the new or revised Directive, [Safety] MCFRS Bulletin, Policy or Procedure or Instruction. During the thirty (30)-day period, the Union may request to meet and confer with the Employer regarding the new or revised Directive, [Safety] MCFRS Bulletin, Policy or Procedure or Instruction. The Employer will make all reasonable efforts to accommodate the Union's request to meet and confer. If the Union submits proposals on negotiable matters, the parties shall meet to discuss such proposals during and, if necessary, after the expiration of the thirty (30)-day period.
- D. If a bargaining unit employee is disciplined or negatively appraised on his or her performance evaluation, and such discipline or negative appraisal is related to the implementation of any new or revised Directive, the Employer shall have the burden to demonstrate that the Union was provided notice and opportunity to submit written comments on such Directive, [Safety] MCFRS Bulletin, Policy, Procedure or Instruction. The above-described "burden" shall be in addition to, rather than in lieu of, the Employer's burden of proving by a preponderance of the evidence in an arbitral proceeding the employee's culpability for the disciplinary infraction with which he or she was charged.
- E. Prior to the release of any promotional bulletin for a position within the bargaining unit, the Employer will forward a draft of the bulletin to the Union President for comments no less than five (5) calendar days prior to the posting of the bulletin.

* * *

ARTICLE 23 - HOURS OF WORK

* * *

Section 23.1 Operations

Hours of work for employees other than those listed below, shall be not more than an average of forty-eight (48) hours per week, and such employees shall work shift work at twenty-four (24) hours on and forty eight (48) hours off, with an inclusion of the appropriate Kelly day(s) off. Early relief up to [two (2)] four (4) hours is authorized if approved by the Station Officer.

* * *

ARTICLE 28 – TRANSFERS

* * *

Section 28.7 Voluntary Transfers

Voluntary transfers shall be given serious consideration over involuntary transfers, provided that the voluntary transfer applicant meets the minimum qualifications for the vacancy. An employee may submit a request for a voluntary transfer after having completed 24 months service following his/her initial appointment date as a career fire fighter/rescuer. At such times that only one bargaining unit employee has requested a voluntary transfer to a vacant position, the employer will consider transferring an employee who has spent less than the prescribed period of time in the employee's current assignment. A bargaining unit employee who seeks a voluntary transfer shall submit [his/her] an electronic request via an appropriate computer program through the chain-of-command to the appropriate Division Chief. The computer program shall include the following features:

1. A detailed electronic receipt that is sent to the employee following submission of the transfer request.
2. Electronic supervisory comments with a copy of the comments sent to the employee.

Within 30 calendar days of receiving the request, the [bureau] Division Chief [shall] must inform the employee if the request is granted, held or denied. The employee seeking a voluntary transfer may ask [(in writing)] that the transfer request be held for a period not to exceed six months. A transfer request that is held at the employee's request remains valid until the desired transfer is granted, the employee rescinds the transfer request or the hold period expires, whichever occurs first. If, at the end of the hold period, the desired transfer has not been granted and the employee has not rescinded the request, the Division chief must inform the employee if the request is granted or denied.

* * *

ARTICLE 29 - PROMOTIONS

* * *

Section 29.2 Reference Materials

The employer shall identify and make available study materials as described below [ninety (90)] one hundred and twenty (120) calendar days prior to the examination. Included in the list of study material shall be the address of the publishers of the study material. The employer shall provide copies of the study materials as follows:

- A. One set to the President of the Union for the Union Office
- B. Six sets to be placed at locations agreed to by the President of the Union and the Fire Chief or their designee

* * *

ARTICLE 35 - HEALTH AND SAFETY

* * *

Section 35.6 Workplace Safety and Efficiency of Operations

No one other than Montgomery County employees and officers, employees or members of a County LFRD/Corporation shall be permitted in the following areas not open to the public: sleeping, dining or cooking, functional hygiene (showers, bathrooms, locker rooms) and living areas (including, but not limited, to laundry rooms, lounge and study areas) of any work site (including, but not limited to, fire stations, FEI offices, CE offices, ECC facilities, CMF, PSTA or other assigned office space) in which bargaining unit employees are assigned. Nothing in this section is intended to prohibit persons from having access to the aforementioned areas during non-rest period hours so long as they are accompanied by a Montgomery County Employee or an officer, employee or member of a County LFRD/Corporation; provided, however, that authorized contractors shall not be required to be accompanied while performing their work.

Section 35.7 Critical Incident Stress Management

- A. Bargaining unit employees who become members of the Critical Incident Stress Management ("CISM") Team, shall be permitted, upon acceptance to the team, to attend two sixteen (16) hour courses offered by the International Critical Incident Stress Foundation (ICISF). Bargaining unit employees shall be considered on a detail when attending such training courses during their normally scheduled work hours; and shall

be compensated at 1-1/2 times their regular rate of pay for all time spent in such training courses on their day(s) off. Employees shall be reimbursed by the Employer for any fees that are required to enroll in the courses.

All bargaining unit employees who are CISM team members shall be permitted to attend four (4) quarterly team meetings, each lasting up to eight hours, for purposes of training and continuing education. Bargaining unit employees shall be considered on a detail when attending such meetings during their normally scheduled work hours; and shall be compensated at 1-1/2 times their regular rate of pay for all time spent in such meetings on their day(s) off.

In addition, all bargaining unit employees who are CISM team members shall be permitted to attend thirty-two (32) hours of ICISF-approved training classes every two years. Bargaining unit employees shall be considered on a detail when attending such training classes during their normally scheduled work hours; and shall be compensated at 1-1/2 times their regular rate of pay for all time spent in such training classes on their day(s) off. Employees shall be reimbursed by the Employer for any fees that are required to enroll in the training classes.

- B. All bargaining unit employees shall receive in-station training in stress management and suicide recognition and prevention techniques no less than once every two years. Such training shall be conducted by members of the MCFRS CISM Team.

* * *

ARTICLE 38 - CONTRACT GRIEVANCE PROCEDURE

* * *

Section 38.2 Initiation of a Grievance

- A. The Union may in its discretion, in cases of suspension, demotion or dismissal only, skip step 1 of the Grievance Procedure and take a grievance directly to step 2 - the Office of Human Resources Director [or designee]. If the Union exercises its discretion pursuant to this subsection, it will so notify in writing the Office of Human Resources upon filing the grievance.

* * *

Section 38.3 First Step of the Grievance Procedure

A grievance shall be presented in writing by the Union to the Fire Chief within twenty (20) calendar days of the date the employee knew or should have known of the event giving rise to the grievance. Provided that if the grievance is presented to the MCFRS Labor Relations Officer or

designee as provided above, an additional fourteen (14) calendar days shall be added to the time provided. The Fire Chief, or his designee, and representatives of the bargaining unit, shall meet and discuss the grievance within [twenty one (21)] fourteen (14) calendar days after it is presented to the Fire Chief. The Fire Chief shall respond in writing, to the grievance within fourteen (14) calendar days after the meeting.

Section 38.4 Second Step of the Grievance Procedure

The Union may appeal the decision of the Fire Chief or designee by presenting a written appeal to the Office of Human Resources Director within fourteen (14) calendar days of the Union's receipt of the Fire Chief's or designee's decision. The Office of Human Resources Director or designee and representatives of the bargaining unit shall meet to discuss the grievance within [twenty one (21)] fourteen (14) calendar days after presentation of the appeal to the Office of Human Resources Director. The Office of Human Resources Director shall respond, in writing, to the grievance within [forty five (45)] thirty (30) calendar days of the meeting.

Section 38.5 Binding Arbitration

- A. Upon receipt of the response from the Office of Human Resources Director, [either party] the Union may refer the grievance to arbitration by providing written notice to the other party within [sixty (60)] thirty (30) days after receipt of the response of the Office of Human Resources Director by the Union. The arbitrator shall be chosen from a panel composed of persons agreed upon by the parties. At least sixty (60) days prior to the expiration of this Agreement, one or both parties may provide written notice to the other that it no longer consents to retaining a particular member(s) of the arbitration panel. The parties shall fill the panel vacancy by mutual consent.
- B. The arbitrators shall be selected to hear succeeding grievances in rotation, in the order agreed to by the parties. The parties must contact the arbitrator next in the rotation order within twenty-one (21) days of the date of the written notice referring the grievance to arbitration, and must schedule the arbitration date no later than forty-five (45) days following the date of the written notice referring the grievance to arbitration. If the arbitrator slated to hear a grievance cannot hold the hearing within [a reasonable time] this forty-five (45) day period, the next arbitrator on the panel that is available within this period shall be selected.

* * *

ARTICLE 41 - PRINTING OF CONTRACT

The County agrees to print [1,500] 300 copies of the contract in booklet form to be provided to the Union within ninety days of the effective date of this Agreement. The cover page of the Agreement shall be designed by mutual agreement between the parties. The cost of printing shall be shared equally by the parties. The County agrees to provide the Union four (4) first run copies of the

printed Agreement prior to publication to proof read. The County agrees to correct all spelling and grammatical errors found during proof reading prior to publication and disbursement. Additionally, an e-mail will be sent to all bargaining unit employees containing a hyperlink to the final electronic version of the agreement.

* * *

ARTICLE 46 - UNIFORMS AND EQUIPMENT

Section 46.1 Uniform [Shoes] Footwear

Employees may apply the value of [the] uniform [shoe] footwear to [an alternate] optional [shoe] footwear in accordance with MCFRS Policy & Procedure No. 06-09 "Apparel Policy" dated July 20, 2009. [from a mutually agreed upon list of shoes incorporated herein (See Appendix VIII). The approved list may be amended from time to time by mutual agreement of the parties.]

Section 46.4 Class C Uniform [Shirts]

[Upon depletion of the current inventory of button down Class C shirts, or January 1, 2004 whichever is sooner, the collared golf shirt, short sleeve and long sleeve, will become the only Class C uniform shirt. Prior to the depletion of the current inventory of button down shirts, personnel will be permitted to purchase their own long sleeve golf shirts, provided that the graphics are in compliance with Department Directive 01-01. Additionally, the County will continue to issue short sleeve golf shirts in accordance with the prior collective bargaining agreement. Upon depletion of the button down Class C shirts, or January 1, 2004 whichever is sooner, the County will begin issuing each bargaining unit employee short sleeve and long sleeve golf style shirts until each employee has the required issuance of five shirts of each type. During this transition period the schedule for providing each employee a full complement of the golf style uniform shirt shall be subject to budget limitations. After the initial issuance of the golf shirt, employees shall be issued replacements in accordance with criteria set forth in DFRS Policy and Procedure No. 516.]

The Class C Uniform for bargaining unit employees shall be in accordance with MCFRS Policy & Procedure No. 06-09 "Apparel Policy" dated July 20, 2009.

* * *

ARTICLE 50 - DURATION OF CONTRACT

Section 50.1 [Three] Two Year Agreement

The duration of this Agreement shall be from July 1, 2011 [2008] through June 30, 2013 [2011]. In the first year of the agreement, the parties agree to a reopener on economic items and any items from the County's 1/31/11 Non-Negotiability Declaration letter which are later determined by the LRA to be negotiable. No element or feature of the DROP program shall be a part of this reopener.

Bargaining for this reopener shall commence no later than November 1, 2011 and shall follow the procedures set forth in Chapter 33-153 of the Montgomery County Code. The results of the reopener shall be effective July 1, 2012.

* * *

ARTICLE 52 - PARAMEDIC CERTIFICATION AGREEMENT

Employees in the bargaining unit who [voluntarily transfer or who are promoted] are given preferential consideration for promotion to a paramedic position will be required to sign a paramedic certification agreement consistent with Appendix IV-A. In addition, employees who as a condition of hire were required to sign a paramedic certification agreement will remain subject to the provisions of said agreement as specified in Appendix IV-B or IV-C while in the bargaining unit. The provisions of the paramedic certification agreements for bargaining unit employees are grievable and arbitrable pursuant to the procedures contained in Article 38 of this Agreement.

* * *

ARTICLE 55 - SERVICE INCREMENTS

* * *

Section 55.8 Postponement of Service Increments

Service increments that eligible bargaining unit employees were scheduled to receive in Fiscal Year 2011 pursuant to the 7/1/08 - 6/30/11 Collective Bargaining Agreement but which the County Council elected not to fund for FY 2011 shall be postponed through June 30, 2012. Similarly, the FY 2012 service increments that eligible bargaining unit employees would otherwise receive in Fiscal Year 2012 in accordance with this Article 55 shall also be postponed during FY 2012. However, no bargaining unit employee shall lose service credit for purposes of progression within the uniform pay plan.

* * *

ARTICLE 61 – [MEDICAL REVIEW COMMITTEE] EMERGENCY MEDICAL SERVICES QUALITY IMPROVEMENT

Section 61.1 Medical Review Committee

- A. The Medical Review Committee provided for in COMAR Title 30 shall include one bargaining unit member who is an ALS provider and one bargaining unit member who is a BLS provider. Bargaining unit members assigned to the Medical Review Committee shall be assigned by the Union President.

- B. The Union representatives on the Committee shall be considered to be on a detail if working during these meetings. Hour-for-hour compensatory time or pay at the employee's regular hourly rate shall be credited to Union representatives who attend meetings on their day off.

Section 61.2 Medical Inquiries & System Performance Inquires Involving Bargaining Unit Members:

- A. Any bargaining unit employee who is asked to provide a written statement related to an EMS complaint or QA inquiry that requires the completion of an EMS Incident Referral Control Sheet shall be notified of the following: (1) the date and event number of the incident in question; and (2) the general nature of the complaint and any specific concerns to be addressed in the statement.
- B. For complaints or inquiries subject for review by the Medical Review Committee (MRC) employees must be permitted to review, upon scheduling an appointment at the QA office, the complaining documents used in formulating the investigator's conclusions.
- C. For any complaint or inquiry where the EMS Medical Director proposes a permanent change in and/or removal of the employees pre-hospital care credentials and/or Montgomery County status, the employee and the employee's Union representative (if the employee chooses Union representation), shall be permitted to appear before the EMS Medical Review Committee and make an oral presentation and/or submit a further written statement and other information prior to the Committee's deliberations. In instances where the employee appears before the EMS Medical Review Committee, the information referred to in Sections A and B above must be provided to the employee no later than fourteen (14) days prior to the Medical Review committee meeting.
- D. Nothing in this article shall supersede the authority of the EMS Medical Director under COMAR Title 30.

* * *

Appendix IV-A

**PROMOTION [/ TRANSFER] AGREEMENT
FOR POSITIONS REQUIRING ALS CERTIFICATIONS**

Montgomery County has determined that provision of advanced life support (ALS) services, which includes EMT-I and EMT-P service, is a critical part of the services provided by the Montgomery County Fire and Rescue Service to the citizens of our County. The goal of the County is to promote [/transfer] and maintain a sufficient number of employees who have, or are able to obtain, ALS certification as required by the County. It is also a goal of the County to [move toward providing] provide a "fire day" to ALS providers once every three weeks.

In order to achieve this goal, the County has actively recruited individuals, and you have been selected for [either] promotion [or transfer] to a position which requires ALS certification from among the eligible applicants based on your present or anticipated Montgomery County, Maryland ALS certification.

In consideration of the preferential offer of promotion [/transfer] made to you, you must agree to all of the following continuing terms and conditions of employment. Failure to maintain any term or condition for the duration of the Agreement may result in your immediate involuntary demotion. The employer, Montgomery County, in its sole discretion, retains the exclusive right to offer alternatives such as transfer, if you fail to maintain the Agreement's provisions.

TERMS OF THE AGREEMENT

1. I agree to maintain my ALS certification, as specified by Montgomery County, Maryland, for a continuous period of 3 years from date of promotion [or transfer] to a position requiring ALS certification. ALS certification includes certification as either an EMT-I or EMT-P. Upon completion of the 3rd year, I may maintain my ALS certification, or allow it to terminate, at my sole discretion, and without any penalty or loss of benefit associated with my employment with Montgomery County.
2. If I am promoted during the 3-year term of this Agreement, I fully agree and understand that I remain obligated to maintain Montgomery County, Maryland ALS certification for the remainder of the 3-year term, even though I may be promoted to a position which does not require ALS certification.
3. I further understand that it is within the employer's sole discretion to regularly and routinely assign me to work as an ALS provider at multiple work sites as determined by the employer.
4. I understand and agree that failure to maintain any of the terms or conditions of this Agreement for its duration may result in my immediate demotion. If I do not maintain my ALS certification for the required 3 consecutive years as I have agreed to do, I understand that the employer, at their sole discretion, may provide alternative work placement for me in the Firefighter/Rescuer occupational series. I fully agree and understand that management has this right, but I neither have, accrue, nor obtain any right, benefit, or privilege to retain position or rank with Montgomery County government if I for any reason lose my ALS certification prior to the end of the 3 year Agreement period. I understand that I can grieve or arbitrate any action taken against me pursuant to Article 38 of the parties' Collective Bargaining Agreement as a result of my alleged failure to maintain the terms or conditions of this Agreement.

I acknowledge that I have read this Agreement and that I understand all of the terms and provisions contained in the Agreement. I further understand that all of the terms of this Agreement become binding upon my signature below.

* * *

D [C]. The provisions of the memorandum of understanding shall be grievable and arbitrable pursuant to the procedure found in Article 38 of the parties collective bargaining agreement.

E [D]. Requests for payment wider this program which are submitted more than one year from the start date of any six month period will not be processed, and no compensation is due.

F [E]. Claims submitted for a six month period within the last year, will be acted upon and paid in a timely manner. Reasons for denial of a claim must be in writing.

G [F]. This Memorandum of Understanding will become effective on July 1, 1999 and will expire June 30, 2002.

* * *

**[Appendix VII
DEPARTMENT OF FIRE AND RESCUE SERVICES
MONTGOMERY COUNTY, MD**

DIRECTIVE

NUMBER: 93-26

DATE: November 2, 1993

TO: ALL DFRS Personnel

FROM: Chief Jon C. Grover, Director
Department of Fire and Rescue Services

SUBJECT: Uniform Shoes

The contract between the County and the Union, in Section 45.1, Uniform Shoes states that "employees may apply the value of the uniform shoe to an alternate shoes (sic) from a mutually agreed upon list of shoes". This directive establishes the reporting and reimbursement procedure for implementing this agreement.

The approved list of uniform shoes includes:

Sears	Die Hard	Models 82102, 82402
Warrington	Pro Boots (10" only)	Models 2006

Weinbrenner Thorogood Boot Models LSP105, LSP016

Rocky Eliminator Model LSP072

Employees seeking reimbursement, up to the value of the issued shoes, for purchase of one of these boots must provide the Property Section with a completed "Request for Payment Form" (County Form 1010, copy attached). Please include your full name, DFRS I.D. number, complete home address, and attach an original dated receipt which provides shoe description and place of purchase.

The Property Section will validate the request, and process payment. Payment will be made to the employee by check mailed directly to the address of record.

Routinely, only one issued or alternate pair of shoes will be authorized every 12 month period.]

* * *

IN ARBITRATION

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COUNTY FILE

In the Matter of the Interest Arbitration Between:
MONTGOMERY COUNTY, MARYLAND

and

Interest Arbitration,
Agreement to Be
Effective July 1 2011

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 1664

Before M. David Vaughn, Arbitrator

OPINION AND AWARD

This proceeding between Montgomery County, Maryland ("Montgomery County," the "County" or the "Employer"), and the International Association of Fire Fighters, Local 1664 ("IAFF," "Local 1664" or the "Union") (together, the County and the Union are the "Parties" to the proceeding) takes place to determine the terms of an agreement¹ to succeed an agreement which will expire, by its terms, on June 30, 2011. (J. Ex. 5)

The Parties engaged in collective bargaining with respect to the successor agreement, but were unable to agree on terms and reached an impasse. Pursuant to the *Montgomery County Code* [Chapter 33 (Personnel and Human Resources), Article X (Fire and Rescue Collective Bargaining), § 33-153 (Bargaining, impasse, and legislative procedures)], the Parties selected me as Mediator/Arbitrator. Mediation efforts were conducted January 20, 22 and 23, 2011, which brought the Parties closer together but were unsuccessful in completely bridging the gap between them.

Throughout the proceeding, the Union was represented by Erick J. Genser, Esq. and Local President John Sparks, and the County by Associate County Attorney William Snoddy, Esq., and Labor Relations Director Joseph Adler.

¹In the Partial Tentative Agreement between the Parties dated February 3, 2011, they agreed to a two-year agreement, with a re-opener "on economic items and any items from the County's 1/31/11 Non-Negotiability Declaration letter which are later determined by the LRA to be negotiable," to become effective July 1, 2012. (J. Ex. 7)

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The statutory impasse procedures provide that I am to select, on a total package basis, from the Last, Best and Final Offers ("LBFO"s) submitted by the Parties. Pursuant to agreement and my direction, the Parties exchanged and provided to me on January 27, 2011, their LBFOs. The Union's LBFO is Attachment A hereto; the County's LBFO is Attachment B. The Parties had further discussions with each other and with me between that date and commencement of the hearing. Those efforts were not successful in resolving the impasse.

The arbitration hearing convened in Gaithersburg, Maryland, on February 1, 2011, and continued on February 2 and 3, 2011. A court reporter was present at the hearing; by agreement of the Parties, the verbatim transcript (page references to which are designated ("Tr. __")) which he caused to be prepared constitutes the official record.

In the proceeding, the Parties were each afforded full opportunity to present witnesses and documents and to cross-examine witnesses and challenge documents offered by the other.² Witnesses were neither sworn nor sequestered. For the County testified Department of Finance Economist David Platt, Office of Management and Budget ("OMB") Director Joseph F. Beach, Benefits Manager Wes Girling, Operating Budget Coordinator Alex Espinoza, Managing Director of Public Financial Management ("PFM") Michael Nadol and

²The Parties discussed - briefly on February 1 and more expansively on February 2 - how to proceed with respect to those proposals contained in the Union's LBFO that the County asserted to be non-negotiable and for which it issued a declaration of non-negotiability on January 31, 2011. By a Settlement Agreement dated February 3, 2011 (Co. Ex. 1), the Parties agreed:

[S]hould [the County] later challenge the negotiability of the Union proposals on: Incentive Weather Attendance Policy, and Critical Incident Stress Management and CISM Team Training, the County will not seek to void the entire Union LBFO. In the event that any portions of the arbitrated award are later deemed in a final decision to be non-negotiable, those portions will be removed from the award. At the same time, the County agrees that upon a final decision that the Union's proposals on these matters are negotiable, the Union's language will immediately be incorporated in the parties' collective bargaining agreement.

Assistant Chief Ed Radcliffe. Actuary Joseph W. Duda, Labor Economist Amy McCarthy, Captain Stacey Daniel, Captain Robert Ford, Captain Brock Cline, Master Fire Fighter Jeffrey Buddle and Local President John Sparks testified at the call of the Union. Offered and received into the record during the hearing were Joint Exhibits 1-7 ("J. Ex. ___"), County Exhibits 1-22 and Union Exhibits 1-52 ("U. Ex. ___").

The Parties were able, during the course of the hearing, to reach tentative agreement on a number of issues. The Tentative Agreement dated February 1, 2011 (J. Ex. 4) with respect to those issues is Attachment C; the Tentative Agreement dated February 3, 2011, and entitled "Settlement Agreement" (J. Ex. 6), is Attachment D. The Tentative Agreement dated February 3, 2011, concerning Article 50 (Duration of Agreement) (J. Ex. 7), is Attachment E. The articles tentatively agreed to were subject to final resolution of the entire contract. They also agreed that the provisions of the expiring agreement which are not included in the list of items in dispute were tentatively agreed to, either on the basis of the language from the 2008-2011 Agreement (if neither Party offered proposals to change them) or on the basis of agreement reached during negotiations, including informal negotiations which took place during the mediation/interest arbitration process. The Award incorporates agreed-upon contract provisions and makes them a part of the terms of the Successor Agreement.

At the conclusion of the hearing the record was held open to receive a signed copy of the Memorandum of Agreement between the Parties with respect to agreements, to be effective July 1, 2010, with respect to Compensatory Leave, Special Pay Differentials and other matters. (Co. Ex. 21) Upon its receipt on February 4, 2011 the evidentiary record was completed. The Parties elected to close orally. The record of proceeding closed on February 11, 2011, upon receipt of the three-volume transcript.

The Parties agreed that the items remaining in dispute as of the close of the hearing and subject to resolution through the

Interest Arbitration process are Articles 14 (Overtime), 17 (Special Duty Differentials), 19 (Wages), 20 (Insurance Benefits Coverage and Premiums), 23 (Hours of Work), 35 (Health and Safety), 51 (Pensions), 52 (Paramedic Certification Agreement), 55 (Service Increments) and the Inclement Weather Attendance Policy.

This Opinion and Award is based on the record of proceeding and considers the arguments of the Parties, as well as those factors listed in § 33-153, discussed *infra*. In accordance with the *Montgomery County Code* and by agreement of the Parties, I provided mediation assistance in the process; however, information and bargaining positions learned during mediation are not considered and are not relied on herein.

The analysis is conducted on the basis of the evidence adduced at hearing. The evidence is discussed, the positions of the Parties summarized and the LBFO awarded is announced below. As indicated, it is my responsibility to choose, on a total package basis, one or the other of the LBFOs submitted by the Parties as the more reasonable. The Award reflects my choice as well as the adoption of all uncontested provisions of the expiring agreement and of all disputed issues with respect to which agreement was reached in negotiations or the impasse process.

THE LBFOs OF THE PARTIES

The actual LBFOs of both Parties include proposals on articles that, prior to the conclusion of the hearing, were resolved between them.³ Specific issues that were resolved include proposals on Articles 2 (Organizational Security), 9 (Administrative Leave), 14 [Overtime, with respect to "Committee Assignments" (Section 14.3) and a new subsection on "overtime cancellation"] 22 (Prevailing Rights), 28 (Transfers), 29 (Promotions), 30 (Discipline), 35 [Health and Safety with respect to "Workplace Safety and Efficiency

³The record contains three Tentative Agreements, one dated February 1, 2011 (J. Ex. 4), and two dated February 3, 2011 (J. Exs. 6 and 7), that, together, identify the agreed-upon proposals.

of Operations (Section 35.6)], 38 (Contract Grievance Procedure), 41 (Printing of Contract), 46 (Uniforms and Equipment), 50 (Duration of Contract), 61 (Medical Review Committee), a new Article 62 (Collision Review, Driver Status and Remedial Training), Appendix V (Memorandum of Understanding Concerning Compensation for Working Out of Class), Appendix VI (DROP Plan Features) and proposals on "Impasse Procedures." These portions of the Parties' respective LBFOs having been resolved, they are, therefore, not reproduced below.⁴

County LBFO

The County's LBFO (J. Ex. 2) is as follows:

ARTICLE 17 SPECIAL DUTY DIFFERENTIALS

Section 17.3 Multilingual and Sign Language Pay Differential

J. Beginning July 1, 2011, no new bargaining unit employees will be tested for entrance into the multilingual program for the duration of this agreement. In the event that a bargaining unit employee leaves the multilingual program during the term of this agreement, the Employer, based upon operational need, may elect [to] allow a new bargaining unit employee into the program to fill the vacant skill set. [proposes new section]

ARTICLE 19 WAGES

Section 19.1 Wages

[deletes Sections A-E and adds the following:]

⁴In addition to the proposals that were resolved by Tentative Agreement, I note that there is no difference between the Parties' proposals with respect to Appendix IV-A, which both eliminate all references to "transfer" of employees obtaining ALS (Advanced Life Support) certification. For that reason, it, too, is not reproduced.

- A. Any previously postponed GWA will not be paid in this or any future fiscal year.
- B. Effective July 1, 2011, there will be no new progression to either longevity step for the duration of this agreement.

Section 19.2 Salary Schedule

[retains Sub-sections A-D; deletes Sub-sections E and F]

ARTICLE 20
INSURANCE BENEFITS COVERAGE AND PREMIUMS

Section 20.2 Health Benefits

- A. Effective July 1, 2011, the Employer will contribute 70 percent of the total premium cost of the lowest cost health plan provided by the County toward an employee selected health plan. Should the bargaining unit employee select a health plan other than the lowest cost plan, the employer shall pay 70 percent of the total premium cost of the lowest cost health plan. The bargaining unit employee shall pay the remainder of the difference between the cost of the plan they selected and 70 percent of the premium of the lowest cost health plan. Should an employee elect a family coverage plan, or a self + 1 coverage plan, the Employer will contribute 60 percent of the premium of the lowest cost plan. Employees will pay the difference between the Employer's contribution and the total premium cost of the elected family/self + 1 coverage. The rates for each self-insured plan shall be calculated using standard actuarial principles with separate medical trends as determined by the Employer's actuary, which reflect plan design. The Union shall be provided with information (including but not limited to all actuarial and consultant reports) enabling it to review the premium determinations. In all other respects the level of benefits and services provided in the comprehensive health benefit program shall remain unchanged except as provided below. [changes employer premium from flat 80% on all plans to 70% of lowest cost health plan for

individual coverage and 60% of lowest cost health plan for other coverage]

B. [no change]

C. [no change]

D. [no change]

Section 20.4

The County shall also contribute 70% of the individual coverage premiums determined for any calendar year for benefit plans other than the health plans included in Section 20.2(a). Should an employee elect a family coverage plan, or a self + 1 coverage plan, the Employer will contribute 60 percent of the premium of the lowest cost plan. Employees will pay the difference between the Employer's contribution and the total premium cost of the elected family/self + 1 coverage. The Employee Benefits Committee shall be provided with information (including but not limited to all actuarial and consultant reports) enabling it to review the premium determinations. The level of such benefits shall not be reduced. [changes employer premium from flat 80% on all other plans to 70% for individual coverage and 60% of lowest cost plan for other coverage]

Section 20.9 Prescription Drug Plan

The Employer will continue to provide a prescription drug benefit for single and family coverage. The plan shall provide for two cards for family coverage.

Effective January 1, 2009, the County shall provide prescription plans (High Option Plan - \$4/\$8 co-pays and Standard Option Plan - \$10/\$20/\$35 co-pays with a \$50 deductible) for all active employees. Employees who select individual coverage on the Standard Option Plan shall pay 30% of the cost of the Standard Option Plan. The Employer shall pay the remaining 70% of the cost of individual coverage on the Standard Option Plan. For employees who select the High Option Plan, the employer shall pay 70% of the total premium cost of the Standard Option Plan Option and the employee shall pay the remainder of the High Option Plan premium. Should an employee elect a family coverage plan, or a self + 1 coverage plan, the Employer will contribute 60 percent of

the premium of the standard option plan. Employees will pay the difference between the Employer's contribution and the total premium cost of the elected family/self + 1 coverage. [changes employer premium from 80% of SOP to 70% of SOP for individual coverage and 60% of SOP premium for other coverage]

Both plans shall mandate generics. In the event the employee elects to receive a brand medication when a generic medication is available, the member shall pay the cost of difference between the brand and generic medication. [changes "restrict" generics to "mandate" generics; deletes provision that, if "physician requires a brand medication, the employee shall not be responsible for the difference in cost"]

Both prescription plans shall mandate mail-order prescriptions. Employees using mail-order to fill maintenance prescriptions will receive a 90 day supply for two co-pays. If an employee fills a prescription at retail more than twice, rather than utilizing mail-order, the member shall pay the cost difference. [adds first two sentences]

Neither prescription plan will provide coverage for "lifestyle" drugs. [adds new sentence]

[adds following sections:]

20.12 Employee Life Insurance

Effective July 1, 2011, the County provided life insurance benefit will be 1x the bargaining unit member's salary. Bargaining unit members will retain the option to purchase additional life insurance coverage. The amount of coverage will be pro-rated for part-time employees.

20.13 Retiree Health Insurance

The Employer will not provide post-employment health insurance for employees hired after July 1, 2011.

20.14 Retiree Life Insurance

Bargaining unit members who retire after July 1, 2011 will contribute 30 percent of the total premium cost

of County provided life insurance. This includes the period after the retiree reaches age 65.

20.15⁵ Consumer Driven Health Coverage

Effective July 1, 2011, the Employer will begin offering a Consumer Driven Health Plan for employees hired after July 1, 2011. Incumbent employees will have the option to opt into this new plan.

**ARTICLE 51
PENSIONS**

[new section]

F. The employer shall submit proposed legislation to the County Council on or before July 1, 2011, amending Chapter 33, Article III of the Montgomery County Code in accordance with the following principle: Proposed legislation drafted pursuant to this Agreement shall be reviewed and approved by both parties prior to submission to the County Council. The following changes will affect only those retirement applications filed on or after July 1, 2011.

Section. 33-39. Member contributions and credited interest

* * *
(E) Group G, 7½ percent up to the maximum Social Security wage base and 11¼ percent of regular earnings that exceed the wage base and;

(F) Group G member shall revert back to 6¾ percent up to the maximum Social Security wage base and 10½ percent regular earnings that exceed the wage base upon the member's 25th year of credit service. [increases all employee contributions by 2%]

**ARTICLE 52
PARAMEDIC CERTIFICATION AGREEMENT**

Employees in the bargaining unit who receive County-funded training and become certified ALS [Advanced Life Support] providers upon the completion of such training

⁵I note that the County's LBFO denotes this provision as Section "19.15." As it is listed as part of Article 20, I presume it was intended to be Section "20.15."

or who are given preferential consideration for promotion to a paramedic position will be required to sign a paramedic certification agreement consistent with Appendix IV-A or IV-D, as applicable. In addition, . . . [changes employees who "voluntarily transfer or who are promoted" to employees who "receive County-funded training and become certified ALS providers upon the completion of such training or who are given preferential consideration for promotion"]

ARTICLE 55
SERVICE INCREMENTS

55.8 [adds new section]

Effective July 1, 2011, service increments will be suspended for the duration of this agreement.

The County's LBFO also includes, and "revises," an "Appendix IV-D" entitled "ALS Certification Agreement." It appears to make two significant changes to the Appendix. The 2008-2011 Agreement (J. Ex. 5) does not contain an Appendix IV-D and, therefore, cannot be revised. While not delineated here, this proposal is contained in Attachment B, *infra*.

Union LBFO

The Union's LBFO (J. Ex. 3) is as follows:

ARTICLE 14
OVERTIME

Section 14.1 Policy

- B. Overtime is paid at the monetary rate of 1 ½ times the employee's gross hourly rate of pay (including pay differentials). Upon request, bargaining unit employees shall be granted compensatory time at 1 ½ times the excess hours worked in lieu of overtime pay. [changes "may" in line 4 to "shall"]

Section 14.4 Involuntary Overtime [proposes new section]

A. Involuntary Overtime is defined as hours worked by an employee under the following conditions:

1. The employee has not signed up to work voluntary overtime on a given day; and
2. The employee has been ordered to remain on-duty following the end of the employee's scheduled work hours that day due to a staffing shortage.

However, employees who are held beyond the end of their scheduled work hours on incidents or who respond to incidents before or after their scheduled work hours are not considered to be working involuntary overtime.

B. When it is apparent that overtime hiring will be required on a given day, and there is an insufficient number of bargaining unit employees who have previously signed up to work overtime that day on a voluntary basis, the following steps must be taken before any bargaining unit employee is assigned to work involuntary overtime:

1. A Department official will send an email to "#frs.DFRS" explaining that personnel may be assigned involuntary overtime and the work hours involved.
2. Each station officer will be expressly informed to advise on-duty personnel in his/her station that the potential for involuntary overtime exists.

C. Following the steps in subsection B above, if a sufficient number of bargaining unit employees have not elected to work overtime on a voluntary basis, involuntary overtime shall be assigned in the following manner:

The employee currently in the station with the least seniority that meets the qualifications to fill the position will be assigned to work the overtime hours; provided, however, that a more senior employee currently in the station

may choose to accept the overtime assignment, and in so doing, will be considered to be working involuntary overtime.

- D. Except when there are extenuating circumstances, no bargaining unit employee shall be required to work involuntary overtime on more than one occasion during any forty-five (45) consecutive calendar day period.

ARTICLE 19
WAGES

[postpones pay enhancements]

Section 19.1 Wage Increase

- C. Effective the first full pay period on or after July 1, 2009, the base salary for all bargaining unit members shall be increased by 4 percent. This 4 percent wage increase which was to be effective the first full pay period on or after July 1, 2009 and which was postponed through a May 2009 Memorandum of Agreement between the parties shall continue to be postponed during FY 2012.
- D. Effective the first full pay period on or after July 1, 2009, add new longevity step at year 28 (LS2 - 3.5%). No bargaining unit employee otherwise eligible for a 3.5% ("LS2" increase to their base pay shall receive such increase in FY 2012. However, no bargaining unit employee shall lose service credit for purposes of progression to LS2.
- E. Effective the first full pay period on or after July 1, 2010, the base salary for all bargaining unit members shall be increased by 3.5 percent. This 3.5 percent wage increase, which the County Council elected not to fund in FY 2011, shall be postponed during FY 2012.

Section 19.2 Salary Schedule

- C. Bargaining unit employees shall progress to Step LS on the uniform pay plan upon completion of 20 years of service as a County

merit [s]ystem employee. No bargaining unit employee otherwise eligible for a 3.5% "LS" increase to their base pay shall receive such increase in FY 2012. However, no bargaining unit employee shall lose service credit for purposes of progression to Step LS.

- D. Effective at the beginning of the first full pay period beginning on or after July 1, 2010, a Step P will be added at a rate 3.5% greater than the current Step O. All employees will then receive one service increment increase. The existing Step A will then be removed from the schedule, and the remaining 15 steps will be re-lettered A through O. This pay plan adjustment, which the County Council elected not to fund in FY 2011, shall be postponed during FY 2012.

ARTICLE 20

INSURANCE BENEFITS COVERAGE AND PREMIUMS

Section 20.3 Employee Benefits Committee

- A. The parties hereby jointly establish an Employee Benefits Committee for the purpose of maintaining high quality employee benefits, efficiently provided to County employees at a reasonable cost and to study benefit cost containment programs. The Committee shall consist of three (3) members appointed by the County, and three (3) members appointed by the Union. The Union representatives on this committee shall be considered to be on detail if working during these meetings. Hour for hour compensatory time or pay at the employees' regular hourly rate shall be credited to union representatives who attend meetings on their day off. Either party may remove or replace its appointees at any time. In addition, either party may appoint one or more outside consultants (whose compensation shall be the responsibility of the appointing party) who shall be permitted to attend all Committee meetings and who shall advise the Committee members on subjects under Committee review. Upon request, either party shall promptly submit to the other party relevant information within a party's possession, custody or control for

review by the other party and/or its consultant(s). The Union representatives and County representatives on the committee shall each appoint a Co-Chair of the committee from their respective groups. The purposes and functions of the Employee Benefits Committee shall be to: a) review existing employee benefits and their provisions; and b) make findings and/or recommendations to the parties regarding cost containment measures. The Committee shall meet not less than twice a month during the months of July 2011 through October 2011. A quorum for conducting business shall consist of at least two members appointed by each party. On or before October 31, 2011, the Committee shall present written recommendations to the County Executive and the Union President. [proposes to: add one member from each side to Committee (from two to three) and change quorum, have co-chairs rather than rotating chairs, consider "cost containment measures" rather than "changes in employee benefits," meet twice (instead of once) per month and present written recommendations]

- B. The parties agree that during the term of this Agreement the Benefits Committee may review the following subjects as well as any other subjects the parties agree upon. [changes "will review" to "may review"]

Employee + 1 options
Treatment Limits
Medical spending accounts/employer funded
Prospective retiree prescription and vision benefits
New/different healthcare providers
Healthcare provider accreditation
Prescription drug plan consolidation and co-pays
Dental and Orthodontic coverage

C. [deleted]

D. [deleted]

**ARTICLE 23
HOURS OF WORK**

Section 23.1 Operations

Hours of work for employees other than those listed below, shall be not more than an average of forty-eight (48) hours per week, and such employees shall work shift work at twenty-four (24) hours on and forty eight (48) hours off, with an inclusion of the appropriate Kelly day(s) off. Early relief up to four (4) hours is authorized if approved by the Station Officer. [changes early relief from 2 hours to 4 hours]

*In addition, effect 7/1/11, MCFRS Policy and Procedure No. 514 (Absent Without Official Leave) shall be changed in a manner consistent with the above amendment to CBA Section 23.1 to apply to stand-by situations.

ARTICLE 35
HEALTH AND SAFETY

Section 35.7 Critical Incident Stress Management
[proposes new section]

- A. Bargaining unit employees who become members of the Critical Incident Stress Management ("CISM") Team, shall be permitted, upon acceptance to the team, to attend two sixteen (16) hour courses offered by the International Critical Incident Stress Foundation (ICISF). Bargaining unit employees shall be considered on a detail when attending such training courses during their normally scheduled work hours; and shall be compensated at 1-1/2 times their regular rate of pay for all time spent in such training courses on their day(s) off. Employees shall be reimbursed by the Employer for any fees that are required to enroll in the courses.

All bargaining unit employees who are CISM team members shall be permitted to attend four (4) quarterly team meetings, each lasting up to eight hours, for purposes of training and continuing education. Bargaining unit employees shall be considered on a detail when attending such meetings during their normally scheduled work hours; and shall be compensated at 1-1/2 times their regular rate of pay for all time spent in such meetings on their day(s) off.

In addition, all bargaining unit employees who are CISM team members shall be permitted to attend thirty-two (32) hours of ICISF-approved training

classes every two years. Bargaining unit employees shall be considered on a detail when attending such training classes during their normally scheduled work hours; and shall be compensated at 1-1/2 times their regular rate of pay for all time spent in such training classes on their day(s) off. Employees shall be reimbursed by the Employer for any fees that are required to enroll in the training classes.

- B. All bargaining unit employees shall receive in-station training in stress management and suicide recognition and prevention techniques no less than once every two years. Such training shall be conducted by members of the MCFRS CISM Team.

**ARTICLE 52
PARAMEDIC CERTIFICATION AGREEMENT**

Employees in the bargaining unit who are given preferential consideration for promotion to a paramedic position will be required to sign a paramedic certification agreement consistent with Appendix IV-A. In addition, . . . [changes employees who "voluntarily transfer or who are promoted" to employees who "are given preferential consideration for promotion"]

*Also, Appendix IV-A to the parties' collective bargaining agreement shall be amended [to delete references to "transfer" and to "provide a 'fire day'" rather than to have "a goal . . . to move toward providing a 'fire day'."] [The full text of Appendix IV-A is set forth in the Attachment A.]

**ARTICLE 55
SERVICE INCREMENTS**

Section 55.8 Postponement of Service Increments
[proposes new section]

Service increments that eligible bargaining unit employees were scheduled to receive in Fiscal Year 2011 pursuant to the 7/1/08 - 6/30/11 Collective Bargaining Agreement but which the County Council elected not to fund for FY 2011 shall be postponed through June 30, 2012. Similarly, the FY 2012 service increments that eligible bargaining unit employees would otherwise

receive in Fiscal Year 2012 in accordance with this Article 55 shall also be postponed during FY 2012. However, no bargaining unit employee shall lose service credit for purposes of progression within the uniform pay plan.

INCLEMENT WEATHER ATTENDANCE POLICY

MCFRS shall issue the attached "Inclement Weather Attendance Policy" as an official MCFRS Policy and Procedure applicable to all bargaining unit employees effective 7/1/11. [see attached content of Inclement Weather Attendance Policy (the policy is the same one that the Union submitted during bargaining and at mediation)]

POSITIONS OF THE PARTIES

The positions of the Parties in support of the adoption of their respective LBFOs, as modified by mutual agreement, were set forth in opening statements, during the hearing, and in oral closing statements. Their positions are summarized as follows:

The County argues that I should adopt its LBFO as the "most reasonable." It maintains that, when it was affordable to the County, members of the bargaining unit received generous pay increases. The County contends, however, that the fiscal situation has changed, that, for the last several fiscal years, it has had to cut its budget and that it now has a \$300 million budget hole for the upcoming Fiscal Year for which the bargaining impasse exists. It asserts that the County has a structural budget problem, which has been recognized by the Office of Management ("OMB") in the Executive Branch and by the Office of Legislative Oversight ("OLO") in the Legislative Branch.

The County further argues that any reference by the Union to what the Board of Education and its unions have done is irrelevant. It acknowledges that the County funds the Board of Education and that, from a fiscal perspective, schools are an important component of the budget. It maintains, however, that neither the County

Executive nor County Government controls how the Board spends its money. In addition, the County points out that the County, in the last two years, has asked to be relieved from its obligations under the State's Maintenance of Effort law. It contends that, two years ago, when the County did not meet the maintenance requirements, it was subject to a fine and the State Legislature had to pass a law to get the fine removed. The County asserts that, last year, the State Board of Education granted the requested relief. It maintains that one reason the County has high income families who can pay income taxes that provide a substantial revenue stream to the County is the excellent school system available to residents.

The County further argues that the factors I must consider in resolving this impasse were recently changed to deal with situations like the current one. The County contends that it has demonstrated that it cannot afford its current costs, the first consideration under § 33-153(i)(1). It asserts that Mr. Beach testified that the County instituted a savings plan of \$143 million last year and an additional \$32 million this year. It points out that the County has a \$300 million budget deficit for the current year, despite the fact that it has implemented a wage freeze, furloughs, a reduction in full-time equivalents by more than 1,000 positions since FY 2009 and reduced the budget in FY 2011 by 7%.

The County further argues that its residents are the second-most taxed in the Washington Metropolitan area, including counties that have higher median family incomes, such as Fairfax, Arlington and Alexandria. It maintains that, in the last few years, the County has increased the Recordation Tax, the local income tax (to the maximum allowed by state law), the telephone tax, the energy tax and the property tax. The County points out that increasing the property tax any further will require a unanimous vote of the County Council.

The County further argues that I am next required to consider the added burden on County taxpayers which would result from increasing revenues in order to fund the Union's LBFO. It contends

that its residents are essentially "maxed out" with respect to paying additional taxes. The County points out that I am also required to consider its ability to provide the current standard of all public services. It maintains that, although taxes have been increased in the last few years, residents are actually receiving lower levels of service in exchange. The County contends that the \$300 million budget deficit will require further reductions in services. It asserts that, if I select the Union's LBFO over the County's, public services will have to be reduced even further.

The County further argues that, if I decide that it cannot afford the Union's LBFO, pursuant to § 33-153(i)(1), that factor is determinative and there is no need to go to the next phase, described by Section 33-153(i)(2) of the *Montgomery County Code*. It maintains that, in any case, consideration of the provisions of sub-section (2) also require that its LBFO be deemed the "more reasonable." Although the County acknowledges that bargaining unit members have foregone pay increases that were previously negotiated, it asserts that the decisions to do so were not one-sided. It maintains that the Memoranda of Agreement demonstrate that employees received continued benefits in exchange for their agreement to forego pay increases. (Co. Exs. 21-22)

The County further argues that Mr. Nadol's testimony that the County has a structural budget deficit was credible and supported by the data. Although the County acknowledges that it has been able to close its budget deficits each year, it contends that it has only been able to do so by raising taxes and cutting services.

Montgomery County asserts, in addition, that a comparison of wages, hours, benefits and conditions of employment for Firefighters in the Washington Metropolitan Area and Maryland demonstrates that County Firefighters are well compensated. With respect to wages, hours, benefits and conditions of employment of other County employees, it maintains that non-represented employees pay more in cost-sharing for benefits than do bargaining unit members. Finally, the County contends that I cannot give much

weight to the wages, benefits, hours and other working conditions of similar employees of private employers because there is little evidence in the record on this factor.

The County further argues that there are some things that I am not permitted to do with respect to the LBFOs. It asserts, for instance, that I am not permitted to compromise or alter them. It maintains that, although I must consider all previously agreed upon items, including tentative agreements, as they are integrated with specific items that are still in dispute, I may not consider the bargaining history for this particular dispute, including any settlement offers.

The County further argues that Dr. McCarthy's testimony - that the County does not have a structural budget deficit - was discredited. It contends that Dr. McCarthy's research was shoddy, in that she compared job classes that were not comparable and she wanted to leave out a whole class of jurisdiction - Loudoun and Howard Counties - because of something that was found almost 20 years ago. The County asserts that, although Dr. McCarthy attempted to discredit the manner in which the County projects its future budgets, she did not provide a different method that is used by any other local government and is more exact.

The County further argues, notwithstanding the existence of a two-year agreement and an assertion that the County's budget is "structural" that, in any case, Dr. McCarthy's criticisms related to budgetary projections for out years. It maintains that, with respect to the next fiscal year, it has a very good idea what will be required because it will be presenting its FY 2012 budget to the Council next month.

The County further argues that the Union's contention - that it "found" \$2 million in budget savings if the County does not put on a recruit class - is of little consequence. It contends that the Union requested, and received, a large amount of information regarding the budget. Although the County acknowledges that, if it

pulls the recruit class from the budget, the budget deficit will be reduced, it contends that the Union offered no other example that would reduce the projected \$300 million deficit. It points out that any decision not to have a recruit class will not take away the costs of the fixed salaries and benefits of employees who already work for the County.

The County further argues that, with respect to the Union's LBFO, allowing employees to elect compensatory time for overtime (Section 14.1B) is a cost item because, if an employee can take overtime and convert it into compensatory time, it can be cashed out later at a higher rate of pay. It asserts, in addition, that, if a person actually used comp time, the Fire and Rescue Services Department ("Department" or "MCFRS") would have to use overtime to backfill for the missing employee who would be using comp time. The County maintains that this represents an indeterminate cost that it is unable to predict. It contends that the Union's proposal to add a provision on involuntary overtime (Section 14.4) is not reasonable because it would restrict Management's ability to force people onto overtime and it assigns Management-level work to Station officers.

The County further argues that Chief Radcliffe explained that the Union's proposed change to Section 23.1, which would allow employees to come in up to four hours early rather than two, would increase the amount of time employees might be unaccounted for and Management might not know who was supposed to be working. It asserts, in addition, that the Union's justification for this proposal - that many Firefighters live in far off places - is not a reasonable basis for awarding this proposal. It points out that, in reality, since the work schedule is 24 hours on and 48 hours off, employees have two days to get to work.

The County further argues that, with respect to the Union's CISM proposal (Section 35.7), it is not only non-negotiable but also will cost up to \$68,100 in the coming Fiscal Year. It maintains, citing Mr. Espinoza's testimony, that this cost is due

to the fact that CISM team members would be paid overtime if they were not scheduled to be on duty and would have to be replaced by employees at overtime rates if they were scheduled to be on duty.

The County further argues that the Union's inclement weather attendance policy proposal is seriously flawed. It contends that "extreme inclement weather conditions" is not defined in the proposal, which could lead to grievances. The County asserts, in addition, that employees coming from distant locations north of the County could simply stop at the northernmost fire house in the County and not have to travel to their regular work location. It maintains that this would likely result in the County having to double pay - one employee for being on duty and, because he or she would not be at the actual station available to perform work, an additional person, either through backfilling the position or holding someone over at the actual station.

The County further argues that its LBFO is the more reasonable and should be awarded. It maintains that it has taken numerous actions to alleviate its financial difficulties but, despite its efforts, a \$300 million budget deficit remains for FY 2012. It contends that its LBFO is an attempt to reset its cost structure for employee pay and benefits so that it will be able to give reasonable raises to its employees and the County will not be forced to keep deferring them for years to come. The County asserts that, based on the applicable standards contained in § 33-153 of the *Montgomery County Code*, its proposal is the more affordable one, notwithstanding the Union's agreement to maintain pay rates, without a general increase or steps, because health and benefit costs are projected to increase by 10% per year in the short and long term. The County contends that, with employee wage and benefit costs representing 82% of the budget, it will have an ongoing budget problem unless it gets such employee costs in line with its revenue stream.

Finally, in rebuttal, the County argues that the Union's contentions with respect to the LBFOs are without merit. With

respect to the Fire Tax, it asserts that the Fire Tax is not sufficient to fully fund the Department and its personnel, which explains why the Department has had to cut its budget in each of the last several years. It points out that the Fire Tax projections (U. Ex. 43) are just that - projections - and may not reach the expected levels. In addition, it points out that the Union did not provide any evidence showing how much the Fire Tax brought in during prior fiscal years and how that number matched the Department's budget for employee wages and compensation.

The County maintains that the factors I must consider under § 33-153(i) do not include the LBFO's impact on employees in the bargaining unit, regardless of its effect. It contends, in addition, that Montgomery County teachers are not a comparable group against which to compare Firefighters because teachers are not "similar employees of other public employers in the Washington Metropolitan area," as required by Sub-section (i)(2)(C). The County asserts that Fairfax County's Fire Tech and Montgomery County's Firefighter 3 are not comparable, since the former is a lead worker who has to take a promotional exam and the latter is not.⁶

The Union argues that I should adopt its LBFO as the "more reasonable." It maintains that, even in good financial times, the County always argues that it cannot afford to pay the level of wages and benefits that bargaining unit employees receive.

Although IAFF acknowledges that some County taxes have been increased in recent years, it argues that, contrary to the County's

⁶At the beginning of his closing argument, County Attorney Snoddy stated that, for previous years, the County "had to close these budget holes, because the revenue numbers kept getting smaller and smaller." (Tr. 956) (Emphasis added.) Union Attorney Genser opened his closing argument with a lengthy discussion, contending that Mr. Snoddy's statement was "mistaken." (Tr. 985-86) I believe that what Mr. Snoddy meant was that, each time the County put out revenue projections, the revenues actually received were less than previously projected. (Tr. 1021-22) As neither Mr. Snoddy's initial statement nor Mr. Genser's disputation are necessary to resolve the instant case, I have not included either in the formal recitation of the positions of the Parties.

claim, a unanimous vote by the County Council would not be required to increase taxes further. It maintains that, as Mr. Beach testified, if property taxes are not already at the County Charter limit - which it asserts they are not - it would only take a simple majority to raise the property tax rate. The Union contends that the County itself acknowledged that the property tax now expected in FY 2012 is going to be below the Charter limit and, therefore, it would only take a simple majority to raise it. [Co. Ex. 3, p. 25 (Circle 32)]

Local 1664 further argues that the County's criticisms of Dr. McCarthy's presentation are without merit. It asserts, for example, that, although there is no exact match, Dr. McCarthy used the closest comparable Fairfax County firefighter classification (F-19 level) to compare to Montgomery County's Firefighter 3. It points out that, in any case, Dr. McCarthy was using the median of local jurisdictions for comparison (U. Ex. 19) and, therefore, even if she should have used a different comparator, the exhibit would not have been much different.

The Union further argues that, similarly, the County's contention - that Dr. McCarthy relied on a nearly 20-year-old arbitrator's decision (U. Ex. 20)⁷ to conclude that the Union's group of comparable jurisdictions is more appropriate than the County's - is unavailing. It maintains that, in the almost 20 years since that decision was rendered, no arbitrator has accepted the County's position that Howard County, Baltimore County, Baltimore City, as well as Loudoun and Prince William Counties in Virginia, are comparable jurisdictions to Montgomery County.

IAFF further argues that Dr. McCarthy properly criticized the way the County projects future expenditures. Although it acknowledges that she did not provide an alternate way to make the projection, it contends that the County's methodology for

⁷Montgomery County Maryland and Fraternal Order of Police, Montgomery County Lodge No 35, Interest Arbitration Award (Second Year reopener) (Alexander B, Porter, Arb.) (February 20, 1993)

projecting future expenditures - calculating the average growth rate and expenditures for the last ten years and applying that rate forward for the next six years - is arbitrary.

Although Local 1664 concedes that its proposal on election of comp time in lieu of cash overtime payments (Section 14.1B) is a cost item for the County, it argues that, in these difficult economic times, the County should want to defer cash overtime payments a little bit into the future. It points out that, pursuant to Section 49.1 of the Agreement, a maximum of only 96 hours per employee may be carried forward from year to year. The Union asserts, in addition, that the County's contention that this proposal will create backfilling requirements is without merit. It maintains that comp time is used in conjunction with the casual leave procedure contained in the Agreement (Section 6.14). The Union contends that there are only a certain number of casual leave slots that are available and bargaining unit members may only schedule their comp time when there is a casual leave slot available.

The Union further argues that it is undisputed that the inclement weather attendance policy was developed by a joint labor-management committee. It asserts that, given the unanimous support of the three management representatives on the joint committee, the County's professed objection to it is unexplained and unwarranted.

IAFF further argues that the County's projected \$300 million deficit is based, in part, on a list of "FY12 Major Known Commitments" that is actually a County "wish list". [Co. Ex. 3, p. (Circle) 5] It maintains that at least one of these "major known commitments" is not actually a commitment, but merely a desire to have a Fire Rescue Recruit Class (line 28). It contends that constructing a budget gap based on "wish list" items, as opposed to real commitments, is inaccurate and misleading.

Local 1664 further points out, with respect to the supposed "structural budget deficit," that the County has routinely

projected large budget deficits year after year and, year after year, it has been able to close those deficits. It asserts, in addition, that the OLO report (Co. Ex. 19) demonstrates that the County has in past years engaged in significant spending to improve and expand public services, such as reducing class size and increasing Ride On bus service. Although the Union does not dispute these accomplishments, it maintains that any budget shortfall created by those expansions should not be blamed on the wages and benefits of public employees, including Firefighters.

The Union further argues that increases in the amount of capital borrowing have also increased County expenditures. It contends that Mr. Beach acknowledged that increasing capital borrowing year after year is discretionary and is not legally required. IAFF asserts, in addition, that there is longstanding waste, inefficiency and redundancy in County Government that are not attributable to employee wages and benefits. It points out that the locally appointed Organizational Reform Commission recently issued a report that said the County could immediately save \$30 million annually simply by eliminating overlapping departments and functions.⁸

IAFF further argues that the County's supposed structural deficit is caused primarily by the County's methodology of projecting future increases in expenditures based on the average increase in expenditures over the past ten years. It maintains that this erroneous methodology leads to ever-expanding budget deficits. It contends, in addition, that the alleged structural deficit is caused by the expansion of discretionary spending, such as increases in the amount of capital borrowing.

The Union further argues that, in any case, there is no structural budget deficit within MCFRS's budget. It asserts that this is because the County and its Fire Service are unique in that § 21-23 of the *Montgomery County Code* provides for a dedicated

⁸Washington Post web site, February 1, 2011. (U. Ex. 16)

revenue source, i.e., the Fire Tax, for the Department. Local 1664 maintains that, by law, all Fire Tax revenues must go toward paying the expenditures of MCFRS, including personnel costs. It contends, in addition, that the assessable tax base for the Fire Tax is growing and will generate approximately \$4 million more in FY 2012 than was raised in FY 2011.

Local 1664 further argues that, even assuming no change in the County property tax, its LBFO is affordable because the Fire Tax will generate more money without any increase in tax rates. It maintains that this is especially so because its LBFO proposes no wage increments and no payments for longevity steps for the next Fiscal Year. The Union contends, in addition, that § 33-153(i) provides that I must "evaluate and give the highest priority to the ability of the County to pay for *additional* short-term and long-term expenditures." (Emphasis added.) It asserts that the only possible additional expenditures contained in its LBFO relate to CISM Team training and continuing education. It maintains that, according to the County, the maximum cost for that proposal is a mere \$68,100 on an annual basis. It contends that, since, on average, 30 employees leave the Department annually, attrition will generate sufficient savings to pay for such CISM training.

The Union does not dispute that the County's LBFO meets the "affordability" standard established by § 33-153 since it would shift millions of dollars in costs from the Employer to employees. It asserts, however, that it is not the "more reasonable," as also required by the law. IAFF maintains that, by any objective assessment, its proposal - which includes a freeze on pay improvements and a mandate that employees continue to contribute the same amount that they have been contributing to the health plan premium and the pension fund - is the "more reasonable." It points out that, beginning July 1, 2009, bargaining unit employees have given up approximately \$20 million in negotiated pay increases over the last three years, more than any other employee group in the County.

IAFF further argues that the County's Draconian proposals would wreak havoc on bargaining unit employees. It contends, citing Dr. McCarthy's testimony, that the County's proposed changes to medical, prescription and pension contributions would cost employees from 5% to 17% of their FY 2012 salary, depending on the combination of plan options chosen and the years of service. (U. Ex. 39) It asserts that the average reduction in employee compensation for each combination, based on years of service, would range from 6% to 8.5%, to 11% to almost 13%. (*Id.*) Local 1664 maintains that these reductions are exponentially greater than the 3.9% deficit that the County Council claims in its December 2010 Fiscal Plan Update, it will have for FY 2012. [Co. Ex. 3, p. (Circle) 3] It points out that, in any case, the Fire Tax pays the personnel costs of Department employees and that tax cannot be used for non-Departmental purposes. It contends that the County's medical, prescription and pension proposals, added to the foregone general wage increases in FYs 2010 and 2011 and no step increases or movement to longevity steps in FY 2012, represent a cost of \$30,000 to the average bargaining unit employee for the three-year period. (U. Ex. 40)

Local 1664 further argues that, rather than imposing huge increases to employee contribution levels for health care coverage, its LBFO proposes that the Parties utilize the already existing Health Care Committee to identify cost containment options for the various health plans. It asserts that the Parties could have spent the last three years studying and making recommendations to reduce costs but that, although the Union identified its appointees to the Health Care Committee, the Office of Human Resources ignored the Health Care Committee by failing to appoint Management representatives to it. In any case, it points out that none of the options proposed by the OLO to increase employee contributions to the health insurance plans was as drastic as the County's LBFO. (Co. Ex. 19, p. C-3)

The Union further argues that it is undisputed that the County's pension proposal - to require employees to pay an

additional 2% into the pension fund - is not needed. It maintains that Mr. Duda testified that, as a result of changes in actuarial assumptions, the County's pension plan costs actually will go down in FY 2012 by \$1.7 million. (U. Ex. 7, p. 48) Although IAFF acknowledges that Mr. Duda stated that at some time down the road these changes would result in a required increase to contributions, it contends that Mr. Duda also testified that, for the last six months of calendar year 2010, the investments in the pension fund enjoyed an annualized rate of return of more than 14%⁹ and asset growth of \$260 million. (U. Ex. 4; Tr. 316-17) It asserts, therefore, that an additional 2% employee pension contribution is not necessary and unreasonable.

IAFF further argues that, after applying the ability-to-pay criteria set forth in § 33-153(i)(1), its proposals are the more reasonable. It maintains that there is only one potential new expenditure (up to \$68,100 for CISM Team meetings and training). It contends, in addition, that if the County Council deems tax increases to be necessary, it can consider tax increases that require a majority, not a unanimous, vote. IAFF points out that the Fire Tax is going to bring in an additional \$4 million which will allow services to be maintained at the current level.

Local 1664 further argues that only some of the remaining factors, listed in § 33-153(i)(2), are relevant to the instant situation. It asserts that the wages, hours, benefits and conditions of employment of other Montgomery County employees - in particular, the contract between the Board of Education and its teachers - is relevant. The Union points out that teachers pay a much lower percentage toward health care premiums - 10% for POS and 5% for HMO through FY 2014 - than do Firefighters, even without adoption of the County's LBFO. (U. Ex. 32) It contends that the Employer's contention - essentially, that Board of Education employees are not County employees - is non-sensical. It asserts

⁹I take note that it is actually 14.26% for all of calendar year 2010, not just for the last six months.

that it cannot be disputed that the Board of Education's budget is set by the County Council and the budget is funded through funds received by the County.

Finally, the Union argues that its non-economic proposals speak for themselves. It maintains that it addressed all of Chief Radcliffe's concerns and that the proposals are eminently reasonable.

DISCUSSION, ANALYSIS AND CONCLUSIONS

Interest Arbitration

Montgomery County Code § 33-153(i) establishes the process for resolution of bargaining impasses in the event the Parties are unable to resolve disputes as to the terms of new agreements through collective bargaining. It first provides for mediation. If that is not successful, the next step is interest arbitration. In advance of that proceeding, the Parties exchange and provide to the impasse neutral Last, Best and Final Offers. The statute provides that "the impasse neutral must select the final offer that, as a whole, the impasse neutral judges to be the more reasonable." I may not amend or compromise the offers, although nothing precludes the Parties from agreeing to modify the offers by mutual agreement, which they have done.

The requirement that the impasse neutral select the most reasonable offer is intended to encourage the Parties to tailor their offers to be reasonable, thereby reducing the differences between them and moving toward what the bargaining process would have produced. Indeed, the reasonableness of the offers which is intended to result from the process provides continued encouragement to the Parties to bridge the last gaps and reach a voluntary settlement, even during the pendency of the arbitration.

The cited Section delineates the factors that I may consider in determining the more reasonable offer and the sequence in which the consideration must be given:

- (1) . . . the impasse neutral must first evaluate and give the highest priority to the ability of the County to pay for additional short-term and long-term expenditures by considering:
 - (A) the limits on the County's ability to raise taxes under State law and the County Charter;
 - (B) the added burden on County taxpayers, if any, resulting from increases in revenues needed to fund a final offer; and
 - (C) the County's ability to continue to provide the current standard of all public services.
- (2) After evaluating the ability of the County to pay under paragraph (1), the impasse neutral may only consider:
 - (A) the interest and welfare of County taxpayers and service recipients;
 - (B) past collective bargaining agreements between the parties, including the past bargaining history that led to each agreement;
 - (C) wages, hours, benefits and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland;
 - (D) wages, hours, benefits, and conditions of employment of other Montgomery County employees; and
 - (E) wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

With the exception of the County's ability to pay for additional expenditures, the cited provision does not require that any particular factor be considered or that all of them be considered.

It simply identifies the factors that I *may* consider¹⁰. Thus, I am free to weigh any listed factor or factors more heavily than others [within the confines of § 33-153(i) supra]. In point of fact, the factors listed are the factors which are generally taken into account by the Parties in their negotiations and by other arbitrators in interest disputes.

I have, in fact, specifically considered each of the factors described above, save one,¹¹ in making this Award. I turn now to a review of the matters in dispute.

General Economic Conditions

The Parties do not dispute that the nation has suffered through the worst economic downturn in 75 years. Council Staff Director Stephen B. Farber referred to it as a "system [that] seemed at risk of falling into the abyss of a second Great Depression." (Co. Ex. 3, p. 1) Beginning in the Fall of 2007 the stock market plummeted, the unemployment rate skyrocketed and the financial lending system came to a virtual halt. While complete disaster was averted, significant damage was done to the economy. Tax revenues, which are, as a general matter, functions of economic

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I am not persuaded by the County's contention that, if I were to decide that it cannot afford the Union's LBFO, pursuant to § 33-153(i) (1), there would be no basis to go to the next step, described by Section 33-153(i) (2). Although sub-section (1) requires that I "first" evaluate and give the highest priority to the County's ability to pay for additional expenditures by considering items (A)-(C), I am not precluded from considering the five additional items contained in sub-section (2). "First" consideration does not mean "only" consideration. Rather, the language of sub-section (2) merely provides that, "[a]fter evaluating the ability of the County to pay under paragraph (1)," I am limited to considering *only* those five additional items. In any case, for the reasons set forth below, I am not persuaded that the County cannot afford the Union's LBFO, that funding the LBFO will require raising tax rates, that tax rates are or as a result of adoption of the Union's LBFO would be at statutory limits, that there will be an added burden on taxpayers or that adoption of the Union's offer will impact on the County's continued ability to provide the current level of County Services.

¹¹The Parties submitted no evidence and made no arguments with respect to private sector employees in the County in comparable jobs. I do not find the circumstances of private sector employees in the County to be material in the analysis of the dispute and therefore give no weight to factor §33-153(i) (2) (E).

activity, declined at the very time that needs for government services increased.

However, there was also significant evidence introduced that the economy, on the national level, is now improving. I take particular note of Mr. Platt's acknowledgment (Co. Ex. 2; Tr. 26-41) to that effect. Specifically, Mr. Platt testified that, nationally, real Gross Domestic Product ("GDP") increased in the fourth quarter of 2010 and a group of 50 economists, surveyed by the *Wall Street Journal*, expect GDP to increase by, on average, 3.3% in the first half of 2011.¹²

The County's Financial Condition

Montgomery County, one of the wealthiest jurisdictions in the nation, has not been immune to the nation's economic slump. During the period 2008 and after, the County's job base eroded and the unemployment rate rose and the number of home sales and home sale prices declined. The downturn had a distinctly negative impact on County revenues: Income tax revenues declined, property tax revenues remained virtually flat, and transfer and recordation taxes and investment income plunged. Evidence presented by the Parties establishes the scope and severity of the downturn and its impact on the County.

To fund its operations and compensate for lost revenues, the County, over the last several years, has increased the recordation tax (twice), the income tax, the telephone tax and the property tax. Most recently, it has increased the fuel/energy tax and telephone tax (the former is scheduled to sunset at the end of FY 2012). (Co. Ex. 5, p. 18) To reduce its expenditures, the County has instituted hiring and procurement freezes, frozen employee salaries, furloughed employees, cut payroll and reduced services. (Co. Ex. 5, p. 13)

¹²Reports issued after the close of the record give no basis to doubt the modestly upbeat projections which were made. See, e.g., Jia Lynn Yang, "Fed improves outlook for growth," *Washington Post*, February 17, 2011, p. A12.

However, similar to the national circumstance, the situation at the local level has taken a turn for the better and is projected to continue to improve. Mr. Platt testified that, on a regional basis, the economy is growing, payroll employment in Montgomery and Frederick Counties is increasing and the Case-Shiller® index for the Washington metropolitan region indicates increasing home prices. In fact, Mr. Platt testified that home prices in Montgomery County were increasing at double the pace for the region. (Tr. 45)

Mr. Platt testified that, in general, the economic indicators that are used to estimate the County's future tax revenues, "are starting to see some improvement." These positive indicators at the County level include the unemployment rate, which is going down, and resident employment, payroll employment, the stock market and home prices, all of which are going up. (Tr. 76-77) Mr. Platt testified that the County forecasts future increases in tax receipts, particularly income tax receipts. Mr. Platt's testimony suggested that there was only a single negative indicator: home sales which compared month to month have continued to decline¹³ - and two neutral indicators - inflation and the Federal Funds Rate. Mr. Platt also noted that the number of new residential starts has doubled in the last year. Overall, Mr. Platt was "encouraged," although he remained "cautious."¹⁴ (Co. Ex. 2)

Application of § 33-153(i) (1) to Economic Evidence

County Revenues will Rise in and After FY2012

The evidentiary record persuades me that the County anticipates that, as a result of the improvements described by Mr. Platt, County revenues are increasing and will continue to do so

¹³Mr. Platt attributed this to expiration of the Federal first-time home buyers' credit.

¹⁴Again, there have been modest upticks in home prices which suggests that overall improvement in the County's housing markets will occur in the future.

well into the decade. Thus, although total revenues for the six-year period FY 2011-16 are projected to total \$454.8 million below what they were expected to be when the FY 2011 budget was first prepared, it is undisputed that revenues are projected to increase steadily in each of the next five fiscal years, from \$3.693 billion in FY 2011 to \$4.289 billion in FY 2016.¹⁵ [Co. Ex. 3, p. (Circle) 7 and 24)] Similarly, the December 2010 Revenue Update and Selected Economic Indicators (Co. Ex. 3), prepared by Mr. Platt, shows that Income Tax revenues, Property Tax revenues and Transfer and Recordation Tax revenues are all projected to increase over the next five fiscal years,¹⁶ as are revenues generated by County fees and fines. [Co. Ex. 3, pp. (Circle) 30, 33, 35]

Using slightly different numbers from a December 2010 Fiscal Plan Update [Co. Ex. 3, p. (Circle) 3, and Co. Ex. 5, p. 11], Mr. Beach testified similarly, *i.e.*, that, between FY 2011 and FY 2017, estimated total revenues to the County, and each of the constituent segments, will increase in each fiscal year except for the fuel/energy tax due to its sunset in FY 2013.¹⁷

Increases in County Expenditures

Mr. Beach further testified that, as a result of substantial changes to the non-operating budget use of revenues in FY 2012 - in particular, increases in Debt Service (\$31.3 million), PAYGO (\$32.5 million), a contribution to General Fund undesignated reserves (\$79.0 million) and the pre-funding of retiree health insurance (\$83.6 million) - there will be a significant reduction in the amount of money available for use by the County's agencies, a

¹⁵Total revenues in FY 2017 are also projected to maintain the trend, increasing to \$4.423 billion. [Co. Ex. 3, p. (Circle) 7]

¹⁶Due to the sunset provision in the fuel/energy tax, Other Tax Revenues are projected to decline in FY 2013 but are otherwise forecasted to increase in subsequent years. [Co. Ex. 3, p. (Circle) 37]

¹⁷There is a single exception: Transfer/Recordation Taxes are projected to decrease between FYs 2011 and 2012 by 0.8%, from \$134.5 million to \$133.4 million.

reduction of 3.9% between what was available in FY 2011 and what will be available in FY 2012.¹⁸ (Co. Ex. 5, p. 11; Tr. 140 and 167) Mr. Beach testified that, as a result of this combination of factors, while, in FY 2011 (after adjustments), the Agencies will spend exactly the \$3.385 billion that was available to allocate to them, for FY 2012, the Agencies will spend \$3.559 billion, but there will only be \$3.259 billion available to fund their operations. This \$300 million difference is the budget deficit that the County projects for FY 2012. (Tr. 104 and 168-69) The County contends that, in each subsequent year, that deficit will grow ever larger.

County Assertion of "Structural Deficit"

The County contends that it has reduced services across departments and that residents are "taxed to the max." It concludes, therefore, that the apparently growing differential between revenues and expenditures represents a "structural budget deficit" which must be corrected through spending reductions. The term "structural deficit" is a term of art. It means a deficit which exists independent of the business cycle. A "structural deficit" is one which remains even when an economy is operating at its full potential. The existence of a deficit under such circumstances implies unsustainable spending and/or insufficient revenues. The evidence of record does not support the existence of a structural deficit in County governmental operations. Repeating the claim, as Mr. Nadol and others did (Tr. 11, 113-15, 412, 462-63, 495-99, 956, 960 and 973-74), does not make it so.

The County expended a great deal of effort proving that the economy has been in a serious downturn. That is undisputed. It is also undisputed that County tax revenues have been reduced during

¹⁸For budget purposes, there are four County Agencies: Montgomery County Public Schools, Montgomery College, the Maryland-National Capital Park and Planning Commission and Montgomery County Government. As of December 14, 2010, the non-operating budget use of revenues for FY 2011 was estimated at \$350.2 million, while, for FY 2012, it was estimated at \$570.0 million, a \$220 million increase.

the downturn. However, the evidence establishes no more than that the business cycle causes ebbs and flows that result in cyclical deficits, albeit in the instant situation a particularly nasty downturn that has dropped deeper and lasted longer than previous declines. The impact of the downturn on County revenues has been prolonged in part because tax revenues lag the larger economic recovery and because housing and construction, in particular, have been slow to rebound.

Notwithstanding the downturns and the lagging recovery, the evidence clearly establishes that County revenues will increase for, and after, FY 2012. The deficits projected by the County are created primarily by the its assumption of even faster increases in future spending. The County's methodology for computing projected growth in expenditures is a heavy contributor to its apparently growing deficit in the out years. Mr. Beach testified that, although the FY 2012 spending estimates are relatively specific, in order to calculate expenditures for the out years (in this case, FYs 2013-2017), "we then apply . . . the 10-year rate of growth." (Tr. 133-34) The County's projected cost increases, after FY 2012, are merely based on a simple arithmetic calculation.

The County assumes, in short, that future futures will look like past futures, that the rates of increase in County spending in the austere teens (FY 2012 and beyond) will be budgeted like the decade of the 2000s, including the "go-go" period prior to FY 2008. I find this methodology, and the conclusion the County draws based thereon, to be simplistic in a jurisdiction as sophisticated as Montgomery County. The arithmetic calculation is effortless, to be sure. However, the result is unrealistic and misleading, since there is simply nothing in the record to indicate that past increases in expenditures - especially going back to include the last ten years, when economic times were particularly good and County-provided services and employee compensation increased significantly - are an accurate predictor of future expenditures. Indeed, the County Executive and Council have been working hard to ensure that continued, compounded increases are not implemented. It

is hardly surprising, then, that the County concludes - mistakenly, I am convinced - that future Agency expenditures will increase by a steady 5.5% per year, while future revenues will not keep pace.

I am not prepared - indeed I have no authority - to recommend that the County increase its tax burden on residents. For the reasons set forth, I am not persuaded that the spending reductions - achieved by decreasing benefits and shifting costs to employees - contained in the County's LBFO are necessary in order to satisfy the statutory tax and service requirements of § 33-153. I am also persuaded that rising revenues will be more than sufficient to fund the very small increases contained in the Union's LBFO without increase in the tax burden or erosion of services.

However, even if a tax increase were necessary - and I am not convinced that it is - I am not convinced that the County's taxes are, as it contends, "maxed out." County witnesses did not dispute the Union's contention that, in FY 2012, property taxes are expected to be below the limit set by the Charter. [Co. Ex. 3, p. (Circle) 32] In that case, a simple majority of the Council could increase property taxes, if necessary. Moreover, the dispute involves the wages, benefits and working conditions of MCFRS employees. In fact it is the Fire Tax, levied on the assessed value of taxable real and personal property in the County, that funds MCFRS. It is undisputed that, pursuant to § 21-23 of the *Montgomery County Code*, the Fire Tax is dedicated funding, meaning all revenues it generates must be used to cover the budget of MCFRS. If Departmental expenditures are less than the revenues generated by the Fire Tax (and other fire-related fees that are collected), it does not appear the difference can be used to supplement the County's general funds. Rather, such a surplus would be added to any fund balance that remains from prior years. (U. Ex. 42)

The evidence is that, in FY 2009, the Fire Tax generated almost \$194 million; an additional \$8 million was available to the Department that year from fees, fines and other revenues.¹⁹

The County devoted scant attention to either the Fire Tax or the Departmental budget. The record does not even reflect what the MCFRS budget is, either currently (for FY2011), as proposed FY 2012, or as projected thereafter.²⁰ Although it is apparent that the County seeks to close its estimated \$300 million FY 2012 budget deficit, by the LBFO which it has proposed, there is nothing in the record to indicate how much of the \$300 million is attributable to the Department, i.e., how much the County is seeking to save from the MCFRS budget. The only clue in the record is Mr. Beach's testimony that public safety departments, including MCFRS, were given a "spending reduction goal" of 5% for FY 2012. (Tr. 119-20)

Since Fire Tax revenues are not available to fund non-MCFRS budgetary needs,²¹ the County has offered little evidence that would permit me, pursuant to § 33-153(i), to evaluate any claimed inability to pay for additional MCFRS short-term and long-term expenditures. The record certainly does not contain evidence that leads to a conclusion that the County cannot pay for additional short-term and long-term expenditures from additional estimated Fire Tax revenues or that doing so will increase the tax burden on County taxpayers. Indeed, given the Fire Tax revenues dedicated to fund Department operations, it is not clear how the reductions in employee benefit costs and increases in contributions sought by the

¹⁹It is presumed, therefore, that MCFRS's annual budget is approximately \$190-\$200 million annually, give or take. See note 18 below.

²⁰The record contains the County Executive's recommended FY 2011 budget, as of April 8, 2010, as \$188,445,000, all but \$477,000 (from grant funds) generated from Fire Tax revenues. (U. Ex. 3, p. 2) The FY 2012 budget proposal is not yet available; it will be submitted March 15, 2011.

²¹The record does not confirm whether the reverse is possible, that is, if the Department has a budgetary shortfall as a result of insufficient Fire Tax revenue, whether other County funds may be used to cover the difference.

County will contribute to closing the FY2012 budget gap which is projected.

The evidence is that the assessable tax base for FY 2011 has been projected to be 7.4% higher than FY 2009 (U. Ex. 43); the record does not contain the actual revenues generated by the Fire Tax in FY 2011. The assessable tax base for FY 2012 has been projected to be 2.6% higher than budgeted for FY 2011; again, the record does not contain the estimated revenues to be generated from the Fire Tax in FY 2012. Extrapolations from the FY2009 Fire Tax revenues of \$194 million to FY2011 would yield \$208.25 million in revenues, with a further increase for FY2012 projected to be \$213.67 million. These projections are based on drawing figures from disparate sources in the record and are not relied on with any detail. However, it is undisputed that, based on the estimated assessable tax base, the Fire Tax is projected to generate more than \$4 million of additional revenue in FY 2012 over FY 2011, without any increase in tax rates. (U. Ex. 43; Tr. 946-47) At the very least, that additional revenue undercuts the need to cut Firefighter wages and benefits; and the anticipated increase will be more than enough to cover any small increases that may result from adoption of the Union's LBFO.

I conclude that the County's economic circumstances and projections do not require adoption of its LBFO under the standards of § 33-153(i)(1). To the contrary, as indicated, I am persuaded that the Union's LBFO can be funded without necessitating any increase in tax rates, increasing the tax burden or curtailment of services. Indeed, because the Fire Tax which funds Fire and Rescue Services is a dedicated and non-divertable revenue source, it does not appear that reductions in the Department's budget can be used to close the FY2012 projected gap in the County's general budget.

Analysis of the Specific LBFO Provisions

General Comments

The County made little effort specifically to correlate its LBFO either to the current and projected economic conditions it described. The County specifically identified only \$68,100 of additional short-term and long-term expenditures in the Union's LBFO. (Co. Ex. 8) The remaining costs that the County identified in the Union LBFO it characterized as either "indeterminate" or "potential future costs." With respect to the former, I take note of the fact that one of them (Section 30.8 - Donation of Forfeited Annual Leave for Discipline) was settled by the Parties. (J. Ex. 6)

With respect to the latter, the County identifies six Union proposals, with a total of \$17 million, as having "potential future costs." Pursuant to § 33-153(i), I am directed to evaluate the ability of the County to pay for "additional short-term and long-term expenditures." The County conflated that "potential future costs" with "long-term expenditures." I am not persuaded that they are the same. Potential future costs will be subject to the bargaining process and the political process and will be determined based on the circumstances prevailing at the time; the Award herein does not commit the Parties to such potential costs. See specific discussion, *infra*.

I turn now to discuss the operational and economic justifications for and impact of the specific proposals contained in the LBFOs, in Article order.

Article 14 (Overtime)

Section 14.1B currently *permits* Management to grant employees compensatory time, if they request it, in lieu of overtime pay, but does not require Management to grant the request. The Union proposes to change Section 14.1B so that, if employees request comp time in lieu of overtime pay, their request for comp time "shall"

be granted. There is nothing in the evidentiary record that indicates how this contractual provision operates, in particular, how often employees currently request comp time in lieu of overtime pay but are denied that request. Nor did the County explain specifically why it objects to the proposal. It merely contends that the proposal has an "indeterminate" cost. (Co. Ex. 8)

The County argues that allowing employees to elect compensatory time for overtime is a cost item, albeit "indeterminate" at this time, because, if an employee can take overtime and convert it into compensatory time, it can be cashed out later at a higher rate of pay. However, I note that employees already have the option to request immediate overtime pay or comp time. I also note that wages and steps are frozen for the next 16 months and are unlikely to increase significantly (if at all) at that time. Furthermore, employees, pursuant to Section 49.1 of the Agreement, may only carry over a limited amount of comp time (a maximum of 96 hours).

Given the relatively small number of hours at issue, the lack of large projected wage increases and the absence of any explanation as to how the provision currently operates, or is projected to operate, I am not persuaded that the Union's proposal to change it carries any net additional cost, certainly not a cost of any consequence.

The Union also proposes to add a new Section 14.4 that would deal with involuntary overtime. The proposal defines involuntary overtime; provides that, when it is apparent that overtime will be required and there is an insufficient number of volunteers to fill the need, employees will be notified of the potential for involuntary overtime; and, if involuntary overtime is ultimately needed, provides the manner by which the overtime will be assigned.

The County does not contend that the Union's proposal has any additional cost associated with it. (Co. Ex. 7) The County's objection was expressed by Chief Radcliffe, who testified that the Union's proposal would make it difficult for Management to hold

people over to staff positions on involuntary overtime. (Tr. 520-21) I am not persuaded. The proposal merely establishes a reasonable procedure by which the overtime would be assigned. Chief Radcliffe's objections may be interpreted as an argument to preserve Management discretion or as an argument that the proposal is non-negotiable. The County did not challenge the negotiability of the proposal, but the Parties have provided a mechanism for resolution of the issue should such a challenge be made. I find the effect of the proposal on Management to be minimal.

Article 17 (Special Duty Differentials)

The County proposes to add a new Section 17.3(J) that would stop the testing of bargaining unit employees for entrance into the multilingual program but permits Management, based on operational need, to replace employees who leave the multilingual program. The County does not contend that its proposal would result in a cost savings and it provided no testimony or argument that would indicate the need for or purpose of this proposal. I do not find the proposal to be justified.

Article 19 (Wages)

The Parties' LBFOs both provide for no general wage adjustment ("GWA") for FY 2011 and, by Tentative Agreement dated February 3, 2011 (J. Ex. 7), agree to an economic re-opener for the second year. In addition, neither LBFO provides for longevity increases in FY 2012. The fundamental difference between the two proposals is, essentially, that the County proposal would eliminate postponed GWAs and longevity increases altogether while the Union proposal maintains the GWA and longevity provisions, postpones their implementation and, with respect to longevity increases, provides that employees will not lose service credit for purposes of progression.

As a result of the Union's effort to maintain the wage increase language but make it inoperative for FY 2012, the County

argues that the Union's proposal creates a "potential future cost" of some \$13 million. I am not persuaded. As previously noted, "potential future cost" is not the same as "additional short-term and long-term expenditures." None of these "potential future costs" becomes effective as a result of the language proposed by the Union or by an award of its LBFO.

The Parties have agreed to re-open the Agreement for FY 2013. The treatment of the postponed GWAs and longevity increases for that Fiscal Year will be determined by the Parties through bargaining and, if necessary, through the statutory impasse resolution process, based on the situation prevailing at the time. It would be premature and inappropriate to foreclose the Parties' options in advance. The Parties will have the option in the reopener to adopt some, all or none of the postponed provisions. The Union's proposal to defer but preserve, previous rates and credits, has no cost effect and I find it to be reasonable, in light of the current challenging economic conditions and the cautious optimism as to future conditions.

In addition, Code sub-section (i) (2) (B) permits me to consider past collective bargaining agreements between the Parties, including the past bargaining history. In so doing, I note it is undisputed that, excluding the current round of negotiations, Firefighters have agreed to give up 14½%, approximately \$20 million, in negotiated pay enhancements since 2009. These are major concessions, resulting in large and ongoing cost savings to the County. Any contention that these concessions should not be considered under factor (B), because they were mutually agreed upon and/or included some benefits to bargaining unit employees, is without merit.

With respect to Code sub-section (i) (2) (D), I am not persuaded by Mr. Beach's contention (Tr. 164-65) that, in essence, Board of Education employees are not County employees and that their wages and benefits should not, therefore, be considered by me. Board of Education employees are public employees. The Board of Education

lacks independent taxing authority; the County Council determines how much the Board's budget will be. While it is true that, once the Council approves the Board's budget, it does not have direct control over exactly how the Board spends the allocated funds, it is simply not credible to contend that Board employees are not County employees and that it has no control over what happens to the money. The mere fact that the Board has to return to the County Council annually (if not more often), gives the Council considerable leverage over Board spending decisions.

Finally, pursuant to Code sub-section (i)(2)(C), I may consider how County Firefighters fare when compared to those in other jurisdictions. I find the disagreements between the Parties as to the relevant comparable jurisdictions or positions to be of little value. For example, the Union objects to the use of Baltimore City and Baltimore, Howard and Anne Arundel Counties, as well as Loudoun and Prince William Counties in Virginia, as not comparable. Likewise, the County objects to the Union's failure to include those jurisdictions, alleging that Dr. McCarthy has an unreasonable attachment to an "ancient" arbitration award. Although the jurisdictions of Montgomery, Prince George's, Alexandria, Arlington, Fairfax and the District of Columbia typically are used for comparative purposes, factor (D) specifically calls for comparisons with jurisdictions in the Washington Metropolitan Area and in Maryland. The additional jurisdictions considered by the County clearly qualify for consideration under that description.

The Parties also quibble about wage comparisons. There are certainly grounds to do so. For example, Washington, D.C., has Fire Fighter Tech and Sergeant positions that were ignored by Mr. Girling's documentation. (Co. Ex. 9, p. 71) Additionally, the cited pay ranges have little meaning unless the number of years it takes to get to the top of a progression is taken into consideration. Conversely, top pay rates that take so long to reach that most employees are unlikely to ever reach the top of the progression, e.g., the District of Columbia, where the final longevity step is not received until after 30 years of service

(even though the "normal" retirement is after 25 years), are deceptive. (See Co. Ex. 9, pp. 27 and 72) I take note that, in Montgomery County, where the "normal" retirement is after 20 years of service, the typical Firefighter is unlikely to benefit much from longevity steps, especially the second, which only becomes effective after 28 years of service. (*Id.*)

Similarly, pay ranges are rarely clear on their face. For example, the County's comparison shows (Co. Ex. 9, p. 22) that the maximum annual rate for journey level Firefighters in Montgomery County is about \$800 more than in the District of Columbia and about \$800 less than in Arlington County. However, District of Columbia Firefighters work 312 fewer hours (2,184 vs. 2,496) while Arlington County Firefighters work 416 more hours (2,496 vs. 2,912) than their Montgomery County counterparts. (Co. Ex. 9, p. 70) Thus, on a per hour basis, D.C. Firefighters actually receive significantly more pay than Montgomery County Firefighters, while Arlington County Firefighters receive significantly less pay. In addition, because the standard work year in Alexandria, Arlington and Fairfax is 2,912 hours, *i.e.*, beyond the 53-hour per week standard set by the Fair Labor Standards Act for Firefighters to receive overtime, their pay ranges do not include the overtime pay that Firefighters automatically receive as a result. It is not clear from the salary range how overtime for the hours beyond 53 plays into their ranges. The devil is in the details. The details blunt and obscure the points the Parties would make.

I am not convinced that the Parties' various comparators compel, or significantly impact, the choice between the LBFOs. It is essentially undisputed that, no matter whose comparators are selected, the pay of County Firefighters is neither at the top nor the bottom of any ranking. It is in the middle of the pack, perhaps slightly toward the higher end. The continued wage and step freeze for FY2012 will not increase County Firefighters' position relative to Firefighters in other jurisdictions and may reduce it. Since neither LBFO proposes pay increases for FY 2012,

the wage comparisons between jurisdictions are of little import in choosing between the LBFOs.

Article 20 (Insurance Benefits Coverage and Premiums)

The County proposes to make major changes to its health insurance coverage and contribution levels. The Union proposes to maintain existing contribution levels but to empower the previously established Employee Benefits Committee to identify and recommend cost containment measures. Although the record suggests that health care premium costs are expected to increase by approximately 10% in FY 2012, I note that the County did not contend in its presentation that the Union's LBFO will result in any increased health care costs. (Co. Ex. 8)

Mr. Girling testified that he was asked by Management "to find options for savings in the benefits arena in the amount of \$35 million in the tax-supported part of our budget." (Tr. 186) The \$4 billion budget includes pay and benefits all represented and unrepresented employees. The MCFRS budget represents only about 5% of the total County budget (as indicated, the exact amount is not contained in the record). However, the County estimates that, if its proposal were adopted, it would "save" - that is, reduce benefits and shift costs to employees - a total of \$4,223,450,²² a much higher proportion of the total amount referenced by Mr. Girling (12.1%) than the MCFRS portion of the County budget justifies. The County did not explain why it proposed to make these employees pay so much more than their proportionate share.

In addition, the County proposes to eliminate retiree health insurance and life insurance for employees who hired after July 1, 2011. It gave no estimate as to the savings that would result. The County did not explain why such a proposal is necessary at the

²²Elimination of Optical Benefit (\$53,800); Change in Health and Prescription contributions (\$3,631,620); change in Dental contribution (\$161,410); commencement of mandatory generic drugs (\$161,410); elimination of "lifestyle" drugs (\$53,800); and life insurance change (\$161,410).

present time, except as part of a general effort to reduce public employee compensation and benefits. Such an agenda is not, itself, a basis to favor the County's LBFO except as such reductions may be needed to satisfy the affordability/tax burden/continuation of services criteria. As indicated, I am not persuaded that adoption of the County's LBFO is necessary to meet those criteria.

The County's proposal regarding health benefits would, indeed, have a substantial impact on employees. Although the County correctly points out that the impact on employees is not a factor to be considered under § 33-153(i), the fact that employees have already agreed to reduce their pay, over a three-year period, by an average of \$30,000 (U. Ex. 40), is relevant, under sub-section (2)(B). The fact that other County employees - particularly those working for the Board of Education - enjoy significantly higher health insurance funding (and will continue to do so under current contracts until 2014) militates against reductions in benefits and in County contributions to Firefighter health insurance.

The record contains very little unit-wide cost data, a situation unusual for compensation-related interest arbitration. It is, therefore, impossible to confirm the County's determination that its cost-shifting proposal would save it \$4.2 million. Mr. Girling testified that, for all health insurance options - single, two-party and family coverage - Kaiser is the lowest cost health plan. Under its proposal, supposedly, Kaiser would be the basis for the caps on County contributions. (Tr. 196) The Union contends that United Healthcare is the lowest cost plan. (Tr. 611) Interestingly, nowhere in the County's evidence did it provide the actual cost of Kaiser premiums. Rather, the County provided premium costs for United Healthcare and CareFirst, the highest enrollment HMO and PPO/POS plans, respectively. (Co. Ex. 9, pp. 77 and 79). The variance between Mr. Girling's testimony and PFM's analysis (Co. Ex. 9) is explained, according to the County, by the fact that Kaiser premiums include a prescription drug benefit while United Healthcare and CareFirst do not.

Using the current rates provided by the Union (U. Ex. 26), the County's proposal would result in a 30% employee contribution for single coverage under United Healthcare, but employee contributions of from 35-43% for the other companies. Employee contributions for family coverage would increase more dramatically. An employee who selects United Healthcare, along with CareMark High for prescription coverage, would pay 62% of the combined premium, an increase of almost \$500 per pay period. The County's several benefit proposals, both separately and cumulatively, would place County Firefighters well below other County employees.

Mr. Nadol acknowledged that the County's proposals would establish a level of premium cost sharing by employees that "would be higher than what is currently prevalent in the regional marketplace." (Tr. 412 and 451) I note, but reject, both of the County's contentions with respect to other Montgomery County employees. As an initial matter, the County maintains that non-represented employees pay more in cost-sharing for benefits than do bargaining unit members. However, the bulk of "other" County employees are in bargaining units. The fact that there are thousands of MCGEO, FOP and other County employees whose benefits would now be better than IAFF members if the County proposal were to be adopted is a significant factor counting against the County LBFO. As for Mr. Beach's contention that Board of Education employees - whose benefit levels are set by contract until July of 2014 at levels considerably more generous than those of County Firefighters - are not County employees, see discussion *supra*.

I also note that none of the four options proposed by the OLO to increase employee contributions to the health insurance plans (Co. Ex. 19, p. C-3) was as dramatic as the County's LBFO. OLO's Option #1 proposed a uniform 70/30 split, and, even if implemented all at once, would save the same \$35 million across the County that Mr. Girling was asked to find. Interestingly, the OLO suggested the possibility of phasing in the change in the split over a two-year period, 5% per year.

Although utilizing the Health Care Committee, as the Union proposes, to identify cost containment options (such as the elimination of "lifestyle" drugs), may be too little-too late, it is the County that failed to activate the Committee in accordance with Section 20.3 of the Agreement over the last three years. The second-year reopener would permit the Parties to incorporate any cost containment items to which the Parties agree.

Article 23 (Hours of Work)

Section 23.1 currently authorizes Firefighters to be relieved early, up to two hours. The Union proposes to change Section 23.1 to permit early relief up to four hours. Captain Cline's testimony (Tr. 852-62) confirms that, as the County suggests, the Union's desire to extend expand early life time to four hours is based primarily, though not exclusively, on the fact that a substantial number of bargaining unit members live far away from their work stations.

I am not persuaded that evidence establishes this proposal to be necessary. However, I also note that early relief, whether the current two hours or the proposed four hours, still must be approved by the Station Officer. Thus, Management's concerns with respect to accountability should not be significantly different as a result of additional hours. In addition, I am not persuaded that the additional two hours will be exercised very often, since it would entail making arrangements for early relief at 3:00 a.m.

Article 35 (Health and Safety)

The Union proposes to add a new Section 35.7, providing that CISM Team members attend quarterly meetings, attend training on a bi-annual basis and that in-station training be conducted in stress management and suicide recognition and prevention techniques. The Team is available to provide intervention and support to Firefighters.

The Agency contends that the proposal is non-negotiable, arguing that it assigns work. That determination is for a different forum. I note that as a result of the Tentative Agreement dated February 3, 2011 (J. Ex. 6), the Parties agreed that the negotiability challenge will not impact on my ability to choose between the LBFOs.

In addition, the County contends, based on the number of CISM personnel (approximately 30) and the number of hours involved (a maximum of 32 hours of meetings annually and 32 hours of training bi-annually) that the Union's proposal will cost up to a maximum of \$68,100. It contends that it will incur an additional, although "indeterminate," cost as a result of the in-station training.

The evidence is that the CISM Team was resurrected about ten years ago. It provides a valuable resource for Management and bargaining unit members alike. I am skeptical that the Union's proposal will cost as much as the County estimates. The County assumes that all training will be provided at market rates and that all the positions of CISM team members on duty will be backfilled. Those assumptions are, at best, exaggerated since the evidence establishes that some training can be obtained at lower cost and since positions vacated on a particular shift for training are rarely backfilled. See testimony of Capt. Daniel (Tr. 771-72) I am persuaded that the actual costs required will be minimal - certainly less than the County's projections - and that the training which Team members will provide to their co-workers will, in the long run, save money by reducing Workers' Compensation claims and the cost to replace personnel who resign or retire as a result of work-related stress.

Article 51 (Pensions)

The County proposes to increase employee contributions to the pension plan by 2%. The Union proposes no change to the contribution levels. Neither Party proposes any change on retirement benefits.

The County's proposal would shift \$1,417,420 in additional costs to bargaining unit members during FY 2012. (Co. Ex. 7) A 2% change in pension contribution - from 5.5% to 7.5% - actually represents an increased cost to bargaining unit members of 36.4%.²³ This puts Firefighters at a distinct disadvantage when compared to similar employees of other public employers in the D.C. area [factor (C)] and other County employees [factor (D)]

In any case, as noted by Mr. Duda, the County's plan actuaries determined that, as a result of changes to the actuarial assumptions, the County's overall pension contribution will *decline* by approximately \$1.7 million in FY 2012. (U. Ex. 7, p. 48; Tr. 305 and 308) Thus, the County's cost of providing retirement benefits to Firefighters will decline in 2012 even if no changes are made in employee contributions.

Although witnesses acknowledged that retirement costs are likely to increase over the longer term, I am persuaded that there is no current need for pension contributions to be raised and that even the longer-term increase in costs is highly speculative. Determinations as to increased employee contributions can be made in better economic times and when costs and needs can be better evaluated. Indeed, longer term adjustments to employee retirement are best addressed in other, policy-oriented venues and not as a result of a process setting costs for only a single year. Therefore, I find the Union's proposal to maintain current contribution levels for FY 2010 is reasonable; the County's proposal to increase the contribution levels is insufficiently supported.

Article 52 (Paramedic Certification Agreement)

Both LBFOs propose to change the current language to refer to employees who "are given preferential consideration for promotion."

²³An increase from 9¼% to 11¼% represents a 21.6% increase; from 4¾% to 6¾% represents a 43.1% increase; and from 8¾% to 10¾% represents a 23.5% increase.

The County, however, also proposes to include employees "who receive County-funded training and become certified ALS providers upon the completion of such training."

The County does not indicate how many employees are in each category or whether employees in the one category are identical, or virtually identical, to those in the other category. I have insufficient information to select one proposal over the other on the merits. The County provides neither argument nor evidence to establish costs associated with the proposal.

Article 55 (Service Increments)

Both LBFOs propose a new Section 55.8 that effectively postpones service increments. However, like its proposal with respect to Article 19, the Union attempts to preserve employees' "service credit for purposes of progression within the uniform pay plan." As a result, the County argues that the Union's proposal creates a "potential future cost" of \$4 million. For the reasons previously stated, I am not persuaded that preservation of the service credits constitutes "additional short-term and long-term expenditures." The costs, if any, will be the subject of further negotiations and, if necessary, to impasse resolution procedures, both of which will take place under conditions prevailing at the time.

Inclement Weather Attendance Policy

The Union proposes that the Department issue the draft Inclement Weather Attendance Policy that was previously jointly developed by a committee comprised of both. The County rejects the proposal as non-negotiable. Again, that determination will be made outside of this proceeding; and the Parties have agreed how challenged provisions will be handled.

The County does not dispute that the Union's proposal merely seeks issuance of a draft Policy that was developed and unanimously

agreed upon by a Labor-Management Committee. Management had three members on the Committee. Presumably, the County's objections were either considered by the joint Committee or deemed not to be sufficiently detrimental to preclude recommending the policy. In any case, the County objects that the phrase "extreme inclement weather conditions" is not defined and that employees coming from distant locations outside of the County could simply stop at the outermost fire house in the County and not have to travel to their regular work location, possibly resulting in the County double paying for coverage. I acknowledge potential problems with ways in which the Policy might be utilized. I am not convinced that the severity of those problems outweighs the larger issues in the LBFOs. The County's concerns can be revisited by the Parties, and the Policy revised, based on experience.

Conclusion

Interest arbitration provides resolution of bargaining impasses when the parties are unable to reach agreement through bargaining and mediation. It is, therefore, an extension of the bargaining process; and the results are intended to approximate the result the bargaining process would have produced had it been successful, taking into account the statutory factors, but without the adverse consequences to the public interest which lack of agreement, labor strife or unilateral action might produce. Over the past two years, the Parties agreed to postpone both general wage increases and one step increase. I am persuaded, therefore, that, had the Parties been successful in their bargaining, they would have produced a similar, relatively cost-neutral successor agreement for FY2012.

The Union's LBFO is essentially such a cost-neutral proposal. It has conceded that wages will be flat-lined, for the third year in a row. There are no step increases. There are no increases in health care or retirement benefits. Retirement contributions are maintained at their present level, even though plan costs for FY 2012 are projected to decrease. Longer term increases in

retirement costs are remote and speculative. CISM and comp time proposals are minimal in their effect and reducible by simple administrative actions which are within Management's control.

The County's costing of the Union LBFO identifies only one clear additional cost, for a total of \$68,100 (in a Department budget of close to \$200 million). Even that cost is, as indicated, overstated. The County identifies additional costs as "indeterminate"; I find them to be wholly conjectural and contingent. The remaining "potential future costs" are not short or long-term expenditures within the meaning of the statute.

In the Union's proposal only in the area of medical insurance premiums is a cost increase projected for FY2012. The increase is simply to maintain, not to expand, benefits. The amount of the increase, projected by the County to be 10%, is subject to negotiation with health care providers. The County does not even include this as one of the cost items included in the Union's LBFO. The record does not identify the total amount spent on health insurance premiums for the bargaining unit. The 10% increase in health insurance costs projected by the County will be paid no more than 80% by the County. If, for example, health insurance costs are 10% of employee compensation - a broad estimate subject to many variances - the net cost of maintaining present health insurance benefits for FY2012 will be less than 1% of the Department's budget, even if a 10% increase in premiums comes to pass. And that is without identifying and implementing any cost-savings under the Union proposal or other economies which can be realized. I conclude that any increase in medical insurance premiums will be easily funded by the anticipated increase in Fire Tax revenues.

The County contends that its LBFO should be adopted because it is more "affordable" than the Union's, since it proposes cost reductions in the millions of dollars. This is undoubtedly true; however, reductions in the tax burden of County residents would not necessarily follow. It is not clear, for instance, that excess Fire Tax revenues can be used anywhere except to fund MCFRS

operations or as a reserve for Department operations. In any event, the law does not require that I select the more "affordable" proposal, despite the County's repeated assertions. Neither does the Statute provide that I am to select a proposal which reduces taxes or tax burdens. Rather, § 33-153 provides that I select the more "reasonable" proposal.

The County's LBFO would place bargaining unit members significantly behind other County employees and behind benefit levels contained in previous agreements. It would diminish their standing in comparison to similar employees in surrounding jurisdictions. It would increase their retirement contributions at a time when the costs of their plan are decreasing and would exact deep cuts in health care benefits and funding. I am not persuaded by the evidence, however, that such cost reductions in the MCFRS budget are warranted, given the improving economic outlook for FY 2012 and subsequent years. By contrast, the Union's LBFO will maintain the current relationship with other County employees and with Firefighters in surrounding jurisdictions. It continues the wage and step freeze and does not expand benefits. It is a reasonable proposal, constituting what I believe the Parties would have adopted had bargaining been successful.

Both LBFOs contain provisions that I would adopt if I were free to select provisions on their merits on an article-by-article basis. The reverse is also true: Both LBFOs contain provisions that I would not separately adopt, based on the evidence presented, if given the opportunity. However, I am constrained by § 33-153, which requires that I select that LBFO which "as a whole," I am persuaded is the "more reasonable" or, put another way, the "least unreasonable." None of the smaller proposals, together or separately, outweigh the consideration which must be given to the competing proposals on health benefits and retirement contributions.

I conclude that the County has the ability to pay the small costs of the Union's LBFO, pursuant to my consideration of § 33-

153(i) (1), without requiring an increase in taxes or a reduction in the current standard of all public services. As to the five factors listed in sub-section (i) (2), I find that factors (B) and (D) favor, in general, the Union's LBFO, while factors (A) and (C) are neutral and factor (E) is of no relevance. For the reasons set forth herein, I conclude that, "as a whole," the Union's LBFO is the "more reasonable." The Award so reflects.

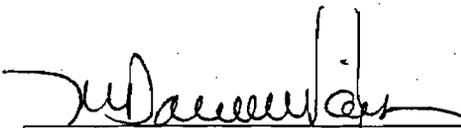
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A W A R D

The Union's LBFO is awarded. The County's LBFO is not awarded.

All of the provisions of the expiring agreement which are not included in the list of items in dispute were tentatively agreed to, either on the basis of the language from the 2008-2011 Agreement (if neither Party offered proposals to change them) or on the basis of agreement reached during negotiations, including informal negotiations which took place during the mediation/interest arbitration process. The Award incorporates agreed-upon contract provisions and makes them a part of the terms of the agreed-upon Articles.

Issued at Clarksville, Maryland this 28th day of February, 2011.



M. David Vaughn
Arbitrator

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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

RECEIVED
MONTGOMERY COUNTY
COUNCIL

Joseph F. Beach
Director

MEMORANDUM

March 29, 2011

TO: Valerie Ervin, President, County Council

FROM: Joseph F. Beach, Director 

SUBJECT: Fiscal Impact Statement – FY12 Labor Agreements between Montgomery County Government and Municipal and County Government Employees Organization (MCGEO), Local 1994, International Association of Fire Fighters (IAFF), Local 1664, Fraternal Order of Police (FOP), Lodge 35, and Montgomery County Volunteer Fire Rescue Association (MCVFRA)

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject labor agreements.

The County Executive's FY12 recommended operating budget is inconsistent with the arbitrated awards for MCGEO, IAFF, FOP, and MCVFRA. In each case, the arbitrator selected the final package offered by the union, which would have either maintained current benefit levels or resulted in only one-time or minimal cost reductions.¹ In the case of the FOP, the arbitrator awarded a service increment pay increase, the only such award of a compensation increase this year.² Instead, the County Executive recommends restructuring employee compensation by modifying the cost sharing arrangements for the County Government's health insurance and retirement plans and reducing certain group insurance benefits coverage.³

Mr. Leggett firmly believes such restructuring is the most viable option available to develop a budget that is fair to taxpayers and employees and which moves toward achieving our long-term objective of fiscal sustainability. Details on the estimated cost savings of these proposals are included as attachments to this memorandum. In total, these proposals are estimated to save the County nearly \$30 million in FY12. Fiscal impact statements for each of the arbitrated awards are also attached. If the Council were to implement the arbitrated awards, resources to restore these benefit levels plus the amounts related to the individual awards would have to be identified to fund these improvements. The fiscal impact of these potential changes is summarized below.

¹ MCGEO's arbitrated award included one-time retirement benefit concessions and a change to health insurance coverage for its bargaining unit members that would have produced greater one year savings in FY12, but would have greater continuing costs compared to the Executive's recommended budget.

² FOP's service increment would cost the County approximately \$1.5 million to fund. If service increments or step increases were added to the budgets for all agencies, the tax supported cost would be \$36.5 million, including \$5.6 million for Montgomery County government, \$28 million for Montgomery County Public Schools, \$2 million for Montgomery College, and \$0.9 million for the Maryland-National Capital Park and Planning Commission.

³ The County Executive has separately transmitted proposed retirement legislation and appropriation resolution language to implement these changes.

Office of the Director

FY12-17 Fiscal Impact Summary

Employee Group	FY12 Recommended Budget				FY13-17			
	Arbitrated Award	CE Rec Funding (non-Employee Benefits)	CE Rec Benefit Changes	FY12 Increase Needed to Fund Award	Arbitrated Award	CE Rec Funding (non-Employee Benefits)	CE Rec Benefit Changes	Total FY13-17 Increase Needed to Fund Award
MCGEO	-22,430,682	-	-14,816,340	-7,614,342	-19,354,297	-	-93,169,950	73,815,653
IAFF	10,160	-59,600	-3,769,250	3,839,010	31,332	-350,580	-23,755,960	24,137,872
FOP	1,573,560	135,000	-3,960,090	5,398,650	11,927,201	-	-24,840,840	35,768,041
MCVFRA	570,250	335,850	-	234,400	1,270,840	300,890	-	969,950
Nonrepresented	-	-	-7,054,320	7,054,320	-	-	-43,483,380	43,483,380
Total	-\$20,276,712	\$411,250	-\$29,600,000	\$8,912,038	-\$6,124,924	-\$49,690	-\$185,250,130	\$179,174,896

JFB:ae

Attachments

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Lisa Austin, Offices of the County Executive
- Joseph Adler, Director, Office of Human Resources
- Marc Hansen, County Attorney, Office of the County Attorney
- Wes Girling, Office of Human Resources
- Steven Sluchansky, Office of Human Resources
- John Cuff, Office of Management and Budget
- Lori O'Brien, Office of Management and Budget

**Group Health, Life, and Pension/Retirement Savings in the County Executive's Recommended Budget
Tax and Non-Tax Supported Funds
(\$ in millions)**

<u>Item and Description</u>	<u>FY12 REC</u>	<u>FY13 PROJ</u>	<u>FY14 PROJ</u>	<u>FY15 PROJ</u>	<u>FY16 PROJ</u>	<u>FY17 PROJ</u>
Retirement: 2% Employee Increase in ERS Contributions ¹	-\$6.04	-\$6.21	-\$6.39	-\$6.60	-\$6.82	-\$7.07
Retirement: 2% Employer Reduction in RSP/GRIP Contributions ¹	-\$4.86	-\$4.99	-\$5.14	-\$5.31	-\$5.49	-\$5.68
Health/Prescription Insurance: 30% Paid by Employee ²	-\$7.28	-\$8.01	-\$8.81	-\$9.69	-\$10.66	-\$11.72
Health/Prescription Insurance: Three-tiered Cost Sharing Arrangement - Salary-based Premium ^{2,3}	-\$7.42	-\$8.16	-\$8.98	-\$9.87	-\$10.86	-\$11.95
Prescription Plan Design Change: Mandatory Generics ²	-\$1.20	-\$1.32	-\$1.45	-\$1.60	-\$1.76	-\$1.93
Prescription Plan Design Change: Eliminate Lifestyle Drugs ²	-\$0.40	-\$0.44	-\$0.48	-\$0.53	-\$0.59	-\$0.64
Dental Insurance: 30% Paid by Employee ²	-\$1.20	-\$1.32	-\$1.45	-\$1.60	-\$1.76	-\$1.93
Life Insurance: 1x Salary Employer-paid ²	-\$1.20	-\$1.32	-\$1.45	-\$1.60	-\$1.76	-\$1.93
Total	-\$29.60	-\$31.76	-\$34.16	-\$36.79	-\$39.68	-\$42.86

¹ Retirement savings are based on the personnel complement as of February 2011. Outyear savings are projected to grow by the CPI-U for the Baltimore/Washington area (Source: Montgomery County Department of Finance).

² Group health savings are estimated by Aon Hewitt. Outyear savings are projected to grow by the assumed growth in group health claims, premiums, and administrative cost growth, as projected by Aon Hewitt. Please note that these savings also include savings to LTD insurance related to the 70%/30% cost share (a Countywide savings of approximately \$48,000) and savings related to the requirement that participants receiving prescriptions by mail order must pay two copayments for up to a 90 day supply.

³ Part-time and full-time employees whose annualized base salary is equal to or over \$50,000 and under \$90,000 must pay an additional premium of \$35.00 each pay period if they enroll in a health plan or a prescription drug plan. If their annualized base salary is equal to \$90,000 and above they must pay an additional premium of \$60.00 each pay period.

**Group Health, Life, and Pension/Retirement Savings in the County Executive's Recommended Budget: MCGEO
Tax and Non-Tax Supported Funds
(\$ in millions)**

<u>Item and Description</u>	<u>FY12 REC</u>	<u>FY13 PROJ</u>	<u>FY14 PROJ</u>	<u>FY15 PROJ</u>	<u>FY16 PROJ</u>	<u>FY17 PROJ</u>
Retirement: 2% Employee Increase in ERS Contributions ¹	-\$1.94	-\$2.00	-\$2.06	-\$2.12	-\$2.19	-\$2.27
Retirement: 2% Employer Reduction in RSP/GRIP Contributions ¹	-\$3.16	-\$3.24	-\$3.34	-\$3.45	-\$3.56	-\$3.69
Health/Prescription Insurance: 30% Paid by Employee ²	-\$3.78	-\$4.16	-\$4.58	-\$5.03	-\$5.54	-\$6.09
Health/Prescription Insurance: Three-tiered Cost Sharing Arrangement - Salary-based Premium ^{2,3}	-\$3.85	-\$4.24	-\$4.66	-\$5.13	-\$5.64	-\$6.21
Prescription Plan Design Change: Mandatory Generics ²	-\$0.62	-\$0.69	-\$0.75	-\$0.83	-\$0.91	-\$1.00
Prescription Plan Design Change: Eliminate Lifestyle Drugs ²	-\$0.21	-\$0.23	-\$0.25	-\$0.28	-\$0.30	-\$0.33
Dental Insurance: 30% Paid by Employee ²	-\$0.62	-\$0.69	-\$0.75	-\$0.83	-\$0.91	-\$1.00
Life Insurance: 1x Salary Employer-paid ²	-\$0.62	-\$0.69	-\$0.75	-\$0.83	-\$0.91	-\$1.00
Total	-\$14.82	-\$15.93	-\$17.15	-\$18.50	-\$19.98	-\$21.61

¹ Bargaining unit-level retirement savings are based on the personnel complement as of February 2011. Outyear savings are projected to grow by the CPI-U for the Baltimore/Washington area (Source: Montgomery County Department of Finance).

² Group health savings are estimated by Aon Hewitt. Bargaining unit-level savings are estimated based on enrollment in November 2010. Outyear savings are projected to grow by the assumed growth in group health claims, premiums, and administrative cost growth, as projected by Aon Hewitt. Please note that these savings also include savings to LTD insurance related to the 70%/30% cost share (a Countywide savings of approximately \$48,000) and savings related to the requirement that participants receiving prescriptions by mail order must pay two copayments for up to a 90 day supply.

³ Part-time and full-time employees whose annualized base salary is equal to or over \$50,000 and under \$90,000 must pay an additional premium of \$35.00 each pay period if they enroll in a health plan or a prescription drug plan. If their annualized base salary is equal to \$90,000 and above they must pay an additional premium of \$60.00 each pay period.

**Group Health, Life, and Pension/Retirement Savings in the County Executive's Recommended Budget: IAFF
Tax and Non-Tax Supported Funds
(\$ in millions)**

<u>Item and Description</u>	<u>FY12 REC</u>	<u>FY13 PROJ</u>	<u>FY14 PROJ</u>	<u>FY15 PROJ</u>	<u>FY16 PROJ</u>	<u>FY17 PROJ</u>
Retirement: 2% Employee Increase in ERS Contributions ¹	-\$1.25	-\$1.29	-\$1.33	-\$1.37	-\$1.42	-\$1.47
Retirement: 2% Employer Reduction in RSP/GRIP Contributions ¹	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Health/Prescription Insurance: 30% Paid by Employee ²	-\$0.98	-\$1.08	-\$1.18	-\$1.30	-\$1.43	-\$1.58
Health/Prescription Insurance: Three-tiered Cost Sharing Arrangement - Salary-based Premium ^{2,3}	-\$1.00	-\$1.10	-\$1.21	-\$1.33	-\$1.46	-\$1.61
Prescription Plan Design Change: Mandatory Generics ²	-\$0.16	-\$0.18	-\$0.20	-\$0.21	-\$0.24	-\$0.26
Prescription Plan Design Change: Eliminate Lifestyle Drugs ²	-\$0.05	-\$0.06	-\$0.07	-\$0.07	-\$0.08	-\$0.09
Dental Insurance: 30% Paid by Employee ²	-\$0.16	-\$0.18	-\$0.20	-\$0.21	-\$0.24	-\$0.26
Life Insurance: 1x Salary Employer-paid ²	-\$0.16	-\$0.18	-\$0.20	-\$0.21	-\$0.24	-\$0.26
Total	-\$3.77	-\$4.05	-\$4.37	-\$4.72	-\$5.10	-\$5.52

¹ Bargaining unit-level retirement savings are based on the personnel complement as of February 2011. Outyear savings are projected to grow by the CPI-U for the Baltimore/Washington area (Source: Montgomery County Department of Finance).

² Group health savings are estimated by Aon Hewitt. Bargaining unit-level savings are estimated based on enrollment in November 2010. Outyear savings are projected to grow by the assumed growth in group health claims, premiums, and administrative cost growth, as projected by Aon Hewitt. Please note that these savings also include savings to LTD insurance related to the 70%/30% cost share (a Countywide savings of approximately \$48,000) and savings related to the requirement that participants receiving prescriptions by mail order must pay two copayments for up to a 90 day supply.

³ Part-time and full-time employees whose annualized base salary is equal to or over \$50,000 and under \$90,000 must pay an additional premium of \$35.00 each pay period if they enroll in a health plan or a prescription drug plan. If their annualized base salary is equal to \$90,000 and above they must pay an additional premium of \$60.00 each pay period.

**Group Health, Life, and Pension/Retirement Savings in the County Executive's Recommended Budget: FOP
Tax and Non-Tax Supported Funds
(\$ in millions)**

<u>Item and Description</u>	<u>FY12 REC</u>	<u>FY13 PROJ</u>	<u>FY14 PROJ</u>	<u>FY15 PROJ</u>	<u>FY16 PROJ</u>	<u>FY17 PROJ</u>
Retirement: 2% Employee Increase in ERS Contributions ¹	-\$1.41	-\$1.45	-\$1.49	-\$1.54	-\$1.60	-\$1.65
Retirement: 2% Employer Reduction in RSP/GRIP Contributions ¹	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Health/Prescription Insurance: 30% Paid by Employee ²	-\$0.99	-\$1.09	-\$1.20	-\$1.32	-\$1.45	-\$1.60
Health/Prescription Insurance: Three-tiered Cost Sharing Arrangement - Salary-based Premium ^{2,3}	-\$1.01	-\$1.11	-\$1.22	-\$1.35	-\$1.48	-\$1.63
Prescription Plan Design Change: Mandatory Generics ²	-\$0.16	-\$0.18	-\$0.20	-\$0.22	-\$0.24	-\$0.26
Prescription Plan Design Change: Eliminate Lifestyle Drugs ²	-\$0.05	-\$0.06	-\$0.07	-\$0.07	-\$0.08	-\$0.09
Dental Insurance: 30% Paid by Employee ²	-\$0.16	-\$0.18	-\$0.20	-\$0.22	-\$0.24	-\$0.26
Life Insurance: 1x Salary Employer-paid ²	-\$0.16	-\$0.18	-\$0.20	-\$0.22	-\$0.24	-\$0.26
Total	-\$3.96	-\$4.25	-\$4.58	-\$4.93	-\$5.32	-\$5.75

¹ Bargaining unit-level retirement savings are based on the personnel complement as of February 2011. Outyear savings are projected to grow by the CPI-U for the Baltimore/Washington area (Source: Montgomery County Department of Finance).

² Group health savings are estimated by Aon Hewitt. Bargaining unit-level savings are estimated based on enrollment in November 2010. Outyear savings are projected to grow by the assumed growth in group health claims, premiums, and administrative cost growth, as projected by Aon Hewitt. Please note that these savings also include savings to LTD insurance related to the 70%/30% cost share (a Countywide savings of approximately \$48,000) and savings related to the requirement that participants receiving prescriptions by mail order must pay two copayments for up to a 90 day supply.

³ Part-time and full-time employees whose annualized base salary is equal to or over \$50,000 and under \$90,000 must pay an additional premium of \$35.00 each pay period if they enroll in a health plan or a prescription drug plan. If their annualized base salary is equal to \$90,000 and above they must pay an additional premium of \$60.00 each pay period.

**Group Health, Life, and Pension/Retirement Savings in the County Executive's Recommended Budget: Non-represented
Tax and Non-Tax Supported Funds
(\$ in millions)**

<u>Item and Description</u>	<u>FY12 REC</u>	<u>FY13 PROJ</u>	<u>FY14 PROJ</u>	<u>FY15 PROJ</u>	<u>FY16 PROJ</u>	<u>FY17 PROJ</u>
Retirement: 2% Employee Increase in ERS Contributions ¹	-\$1.33	-\$1.36	-\$1.40	-\$1.45	-\$1.50	-\$1.55
Retirement: 2% Employer Reduction in RSP/GRIP Contributions ¹	-\$1.81	-\$1.86	-\$1.91	-\$1.97	-\$2.04	-\$2.12
Health/Prescription Insurance: 30% Paid by Employee ²	-\$1.53	-\$1.68	-\$1.85	-\$2.03	-\$2.23	-\$2.46
Health/Prescription Insurance: Three-tiered Cost Sharing Arrangement - Salary-based Premium ^{2,3}	-\$1.56	-\$1.71	-\$1.88	-\$2.07	-\$2.28	-\$2.50
Prescription Plan Design Change: Mandatory Generics ²	-\$0.25	-\$0.28	-\$0.30	-\$0.33	-\$0.37	-\$0.41
Prescription Plan Design Change: Eliminate Lifestyle Drugs ²	-\$0.08	-\$0.09	-\$0.10	-\$0.11	-\$0.12	-\$0.14
Dental Insurance: 30% Paid by Employee ²	-\$0.25	-\$0.28	-\$0.30	-\$0.33	-\$0.37	-\$0.41
Life Insurance: 1x Salary Employer-paid ²	-\$0.25	-\$0.28	-\$0.30	-\$0.33	-\$0.37	-\$0.41
Total	-\$7.05	-\$7.53	-\$8.06	-\$8.64	-\$9.28	-\$9.98

¹ Bargaining unit-level retirement savings are based on the personnel complement as of February 2011. Outyear savings are projected to grow by the CPI-U for the Baltimore/Washington area (Source: Montgomery County Department of Finance).

² Group health savings are estimated by Aon Hewitt. Bargaining unit-level savings are estimated based on enrollment in November 2010. Outyear savings are projected to grow by the assumed growth in group health claims, premiums, and administrative cost growth, as projected by Aon Hewitt. Please note that these savings also include savings to LTD insurance related to the 70%/30% cost share (a Countywide savings of approximately \$48,000) and savings related to the requirement that participants receiving prescriptions by mail order must pay two copayments for up to a 90 day supply.

³ Part-time and full-time employees whose annualized base salary is equal to or over \$50,000 and under \$90,000 must pay an additional premium of \$35.00 each pay period if they enroll in a health plan or a prescription drug plan. If their annualized base salary is equal to \$90,000 and above they must pay an additional premium of \$60.00 each pay period.

Municipal & County Government Employee Organization, United Food and Commercial Workers, Local 1994
Cost of 2011 Interest Arbitration Award
Tax and Non-Tax Supported Funds

Fiscal Impact Compared to FY11 Budget:

<u>Article</u>	<u>Item</u>	<u>Description</u>		<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>	<u>FY16</u>	<u>FY17</u>
				<u>Est</u>	<u>Est</u>	<u>Est</u>	<u>Est</u>	<u>Est</u>	<u>Est</u>
5.4	Multilingual Pay	Multilingual Pay Differential: Bus Drivers Included as an Eligible Class ¹		\$145,238	\$145,238	\$145,238	\$145,238	\$145,238	\$145,238
21.16 (new)	Health Benefits	Medical Coverage: All CareFirst Participants to United HealthCare Select ²	up to	-\$2,096,680	-\$2,306,348	-\$2,536,983	-\$2,790,681	-\$3,069,749	-\$3,376,724
41.6 (new)	Retirement Benefits	Retirement: No Employer Contribution or Service Credit for Participants in Groups A, E, and H in FY12 ³		-\$17,321,000	-\$1,200,000	-\$1,200,000	-\$1,200,000	-\$1,200,000	-\$1,200,000
44.2 & 44.7	Retirement Benefits	Defined Contribution Plan: Participants in the RSP and GRIP Credited with 6% Instead of 8% of Employees' Regular Earnings ⁴ (in recommended budget)		-\$3,158,240	\$0	\$0	\$0	\$0	\$0
		Subtotal		-\$22,430,682	-\$3,361,110	-\$3,591,745	-\$3,845,443	-\$4,124,511	-\$4,431,486
		CE's Recommended Budget Changes		-\$14,816,340	-\$15,925,570	-\$17,151,360	-\$18,499,530	-\$19,981,920	-\$21,611,570
		Additional Cost Compared to the Recommended Budget		-\$7,614,342	\$12,564,460	\$13,559,615	\$14,654,087	\$15,857,409	\$17,180,084
		Potential Future Impact							
5.1	Wages	Service increment: FY11 & FY12 Postponed for the Duration of the Agreement		\$13,817,260	\$13,817,260 Total annualized cost of two service increments.				
5.1	Wages	FY11 and FY12 Postponed Progression to Longevity Step		\$275,733	\$275,733 Total annualized cost of two years of progression into the longevity step.				
5.2 (e)	Wages	Continue Postponement of FY10 GWA of 4.5%		\$14,100,000	\$14,100,000				
		Total		\$28,192,993					

¹ Assumes the average number of regular hours worked per bus driver during calendar year 2010 multiplied by the Countywide average regular and overtime multilingual pay (with benefits for regular multilingual and without benefits for overtime multilingual) and the Countywide average incidence of multilingual pay (approximately 7.5% of County employees receive regular multilingual and 1.6% receive overtime multilingual).

² Assumes that all MCGEO members enrolled in Carefirst at the end of 2010 will move to UHC. The estimated savings is the difference between the cost of the two plans in calendar 2011 (County portion) multiplied by the enrollment at each coverage level (individual, individual plus one, and family).

³ Source: correspondence from Montgomery County's actuary, Douglas L. Rowe, Mercer (attached).

⁴ Based on County's personnel complement as of February 2011.

**International Association of Fire Fighters, Local 1664
 Cost of 2011 Interest Arbitration Award
 Tax and Non-Tax Supported Funds**

Fiscal Impact Compared to FY11 Budget:

<u>Article</u>	<u>Item</u>	<u>Description</u>	<u>FY12 Est</u>	<u>FY13 Est</u>	<u>FY14 Est</u>	<u>FY15 Est</u>	<u>FY16 Est</u>	<u>FY17 Est</u>
35.7 (new)	Critical Incident Stress Management	4 Team Meetings Per Year & 32 Hours of Training Over Two Years	\$69,760	\$71,644	\$73,793	\$76,154	\$78,743	\$81,578
41	Printing Contract	300 Copies of the Contract Will Be Provided to the Union (in Recommended Budget)	\$6,000	\$0	\$0	\$0	\$0	\$0
Appendix V	Out of Class Work	Out of Class Work for Lieutenants and ALS Transport Unit (in Recommended Budget)	-\$65,600	-\$66,186	-\$67,509	-\$69,535	-\$72,142	-\$75,208
		Subtotal	\$10,160	\$5,458	\$6,284	\$6,620	\$6,601	\$6,370
		Cost of Maintaining Other Health Insurance and Retirement Features (Compared to the Executive's FY12 Recommended Budget)	\$3,769,250	\$4,054,590	\$4,369,870	\$4,716,610	\$5,097,870	\$5,517,020
		Total	\$3,779,410	\$4,060,048	\$4,376,154	\$4,723,230	\$5,104,471	\$5,523,390
		Additional Cost Compared to the Recommended Budget	\$3,839,010	\$4,126,234	\$4,443,663	\$4,792,764	\$5,176,613	\$5,598,598
		Potential Future Cost						
19.1(C)	Wages	Continue Postponement of FY10 GWA of 4%	\$4,641,040					
19.1(E)	Wages	Continue Postponement of FY11 GWA of 3.5%	\$4,060,910					
19.2(D)	Wages	Continue Postponement of FY11 New Step of 3.5%	\$4,060,910					
55	Wages	Service increment: FY11 & FY12 Postponed for the Duration of the Agreement	\$3,895,360	Total annualized cost of two service increments.				
19.1 (D) and 19.2 (C)	Wages	Wages: FY11 and FY12 Postponed Progression to Longevity Steps	\$256,510	Total annualized cost of two years of progression into the longevity step.				
		Total	\$16,914,730					

Note: Features of the interest arbitration award that have an indeterminate fiscal impact are not noted here, including the election of compensatory time instead of overtime pay and in-station training and stress management.

**Fraternal Order of Police, Lodge 35
 Cost of 2011 Interest Arbitration Award
 Tax and Non-Tax Supported Funds**

Fiscal Impact Compared to FY11 Budget:

<u>Article</u>	<u>Item</u>	<u>Description</u>	<u>FY12 Est</u>	<u>FY13 Est</u>	<u>FY14 Est</u>	<u>FY15 Est</u>	<u>FY16 Est</u>	<u>FY17 Est</u>
28.I (new)	Wages	Increment on the Service Increment Date	\$1,384,370	\$2,181,790	\$2,247,243	\$2,319,155	\$2,398,006	\$2,484,335
28.I (new)	Wages	Longevity	\$54,190	\$55,653	\$57,323	\$59,157	\$61,168	\$63,370
39	Tuition Assistance	Tuition Assistance is Funded With a \$135,000 Cap (2010 Concession Agreement, in Recommended Budget)	\$135,000	\$0	\$0	\$0	\$0	\$0
Subtotal			\$1,573,560	\$2,237,443	\$2,304,566	\$2,378,312	\$2,459,175	\$2,547,705
Cost of Maintaining Other Health Insurance and Retirement Features (Compared to the Executive's FY12 Recommended Budget)			\$3,960,090	\$4,252,950	\$4,576,650	\$4,932,660	\$5,324,120	\$5,754,460
Total			\$5,533,650	\$6,490,393	\$6,881,216	\$7,310,972	\$7,783,295	\$8,302,165
Additional Cost Compared to the Recommended Budget			\$5,398,650	\$6,490,393	\$6,881,216	\$7,310,972	\$7,783,295	\$8,302,165
<u>Potential Future Impact</u>								
28.I (new)	Wages	FY11 Increment Continues to be Postponed for the Duration of the Agreement	\$2,124,430					
36.A	Wages	Continue Postponement of FY10 GWA of 4.25%	\$5,200,204					

**Montgomery County Volunteer Fire Rescue Association
Cost of 2011 Interest Arbitration Award**

<u>Article</u>	<u>Item</u>	<u>Description</u>	<u>Estimated Total Impact: FY12</u>	<u>Estimated Total Impact: FY13</u>	<u>Estimated Total Impact: FY14</u>	<u>Estimated Total Impact: FY15</u>	<u>Estimated Total Impact: FY16</u>	<u>Estimated Total Impact: FY17</u>
11	Turn-out Boots	220 leather turn-out boots purchased in FY13 and FY14	\$0	\$52,170	\$52,170	\$0	\$0	\$0
12	Nominal Fee	Nominal fee of \$240 or \$400	\$342,000	\$342,000	\$342,000	\$0	\$0	\$0
New	Volunteer Basic Orientation Course	\$5,000 each year of the agreement	\$5,000	\$5,000	\$5,000	\$0	\$0	\$0
Side Letter	Association Operating Funds	\$223,250 in funding each year of the agreement	\$223,250	\$223,250	\$223,250	\$0	\$0	\$0
	Vehicle	New vehicle for Association business	\$0	\$0	\$26,000	\$0	\$0	\$0
	Total		\$570,250	\$622,420	\$648,420	\$0	\$0	\$0

County Executive's Recommended Funding for MCVFRA Contract Award

<u>Article</u>	<u>Item</u>	<u>Description</u>	<u>Estimated Total Impact: FY12</u>	<u>Estimated Total Impact: FY13</u>	<u>Estimated Total Impact: FY14</u>	<u>Estimated Total Impact: FY15</u>	<u>Estimated Total Impact: FY16</u>	<u>Estimated Total Impact: FY17</u>
11	Turn-out Boots	300 leather turn-out boots purchased in FY12 and FY13	\$71,140	\$71,140	\$0	\$0	\$0	\$0
11	Gear Bags	County to supply 874 gear bags	\$34,960	\$0	\$0	\$0	\$0	\$0
12	Nominal Fee	Nominal fee of \$150 or \$250	\$213,750	\$213,750	\$0	\$0	\$0	\$0
New	Volunteer Basic Orientation Course	Training not to exceed \$16,000 each year of the agreement	\$16,000	\$16,000	\$0	\$0	\$0	\$0
Side Letter	Association Operating Funds and Vehicle	Eliminate Association funding effective July 1, 2011 and cancel purchase of Association vehicle	\$0	\$0	\$0	\$0	\$0	\$0
	Total		\$335,850	\$300,890	\$0	\$0	\$0	\$0
	Additional Cost to Fund Arbitration Award		\$234,400	\$321,530	\$648,420	\$0	\$0	\$0

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Douglas L. Rowe, FSA, MAAA, EA
Principal

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Mr. Wes Girling
Montgomery County Government
101 Monroe Street, Seventh Floor
Rockville, MD 20850-2589

February 17, 2011

Subject: Analysis of Proposed Changes

Dear Wes:

This letter summarizes cost estimates for suspending one year of service for both benefit accrual and eligibility (vesting, retirement) for groups A, E and H, and GRIP members of the Montgomery County Employees' Retirement System (ERS).

We don't have RSP payroll. The immediate savings for that plan presumably would be 8% of the affected payroll. The ultimate savings may be somewhat less because the foregone contributions would not be forfeited by non-vested terminations.

The changes reflected in this letter are based on our understanding of the proposed plan changes which you communicated to us over the telephone on February 11, 2011.

The estimates are based on the July 1, 2010 actuarial valuation data. The actuarial assumptions and methods are the same as those used in our July 1, 2010 actuarial valuation report unless otherwise noted. Actual costs will depend on the actual data and experience of the plan. By cost, we mean the change in Normal Cost, since it represents the present value of the benefits which are expected to be allocated to the service during the year beginning on July 1, 2011.

As requested, we have estimated the impact of the plan changes on FY2012 County contributions. That is a year earlier than the most common recognition of past plan improvements by the County, which often would have been reflected in the valuation following the change and funded in the fiscal year beginning a year after the valuation date.

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Mr. Wes Girling
Montgomery County Government

Description of Proposed Plan Provision Changes

- Group A, E, and H members would not earn service during the July 1, 2011- June 30, 2012 year. However, employees in groups A, E, and H would continue to contribute to the ERS during that period.
- GRIP members account balances would not be credited with the County contribution of 8% of pay for the July 1, 2011- June 30, 2012 period. However, GRIP members would continue to contribute during the same period.
- RSP members would not receive the County contribution of 8% of pay for the July 1, 2011- June 30, 2012 period.

Actuarial Assumptions

Except as noted below, all the assumptions used in this analysis are the same as those used in the July 1, 2010 valuation.

Estimated Savings of Proposed Changes

We had neither the time nor the budget to prepare a detailed analysis of the impact of the proposed changes on County contributions. Regardless of time or budget, we cannot determine in advance how employee behavior would be affected. Some employees may defer retirement due to lower benefit accruals, higher early retirement reductions or lack of eligibility to retire. Others may not. We believe that this impact is small in relation to the impact on Normal Cost. To estimate the Normal Cost savings, we split the components of the Normal Cost from the July 1, 2010 valuation into its service-related (e.g. normal retirement) and non-service-related (e.g. contribution refunds, certain disability benefits) components.

Some employees who would otherwise have retired during FY2012 or later may decide to retire earlier. This could increase County contributions. We did not attempt to quantify this cost.

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The estimated savings of the proposed changes based on the service-related components of the Normal Cost from the 2010 valuation are shown in the table below.

	Represented	Non-represented	Total
Group A	\$ 19,000	\$ 9,521,000	\$ 9,541,000
Group H	10,621,000	67,000	10,687,000
Group E	6,681,000	1,340,000	8,020,000
Total	\$ 17,321,000	\$ 10,928,000	\$ 28,249,000

Due to rounding numbers don't always total

The savings for the GRIP plan would be 7.52% of GRIP payroll. We were not able to identify the portion of the payroll pertaining to MCGEO based on our current data.

If the proposed changes are adopted the County contributions savings shown above are the only ones we would expect to recognize in the 2012 fiscal year. However, the Actuarial Accrued Liability could also decrease based on some employees retiring later due to the change. A very rough approximation of this figure is an amortization payment savings of approximately \$400,000 (based on 10% deferring retirement for a year) to \$1,200,000 (based on 30% deferring retirement for a year). With more time, we can fine tune these figures, but not eliminate the uncertainty over what portion of employees might defer retirement. As stated before, some employees may decide to retire earlier, which could reduce the savings shown above for employees retiring later.

Changes to retirement behavior could also impact the costs in the retiree medical plan. We have not attempted to quantify these costs.

The changes seem likely to increase plan administration costs. We have not attempted to quantify these costs.

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Mr. Wes Girling
Montgomery County Government

Important Notices

Mercer has prepared this letter exclusively for Montgomery County; Mercer is not responsible for reliance upon this letter by any other party. Subject to this limitation, Montgomery County may direct that this letter be provided to its auditors.

The only purposes of this letter are to provide an analysis of the change to FY2012 contribution amounts and July 1, 2010 liabilities associated with the potential changes outlined in this letter. This letter may not be used for any other purpose; Mercer is not responsible for the consequences of any unauthorized use.

Decisions about benefit changes, granting new benefits, investment policy, funding policy, benefit security and/or benefit-related issues should not be made on the basis of this letter, but only after careful consideration of alternative economic, financial, demographic and societal factors, including financial scenarios that assume future sustained investment losses.

This letter only represents a snapshot of a Plan's estimated financial condition at a particular point in time; it does not predict the Plan's future financial condition or its ability to pay benefits in the future and does not provide any guarantee of future financial soundness of the Plan. Over time, a plan's total cost will depend on a number of factors, including the amount of benefits the plan pays, the number of people paid benefits, the period of time over which benefits are paid, plan expenses and the amount earned on any assets invested to pay benefits. These amounts and other variables are uncertain and unknowable at the date of the analysis.

Because modeling all aspects of a situation is not possible or practical, we may use summary information, estimates, or simplifications of calculations to facilitate the modeling of future events in an efficient and cost-effective manner. We may also exclude factors or data that are immaterial in our judgment. Use of such simplifying techniques does not, in our judgment, affect the reasonableness of analysis results for the plan.

To prepare this letter, actuarial assumptions, as described herein and in the July 1, 2010 actuarial valuation report, are used in a forward looking financial and demographic model to select a single scenario from a wide range of possibilities; the results based on that single scenario are included in this letter. The future is uncertain and the plan's actual experience will differ from those assumptions; these differences may be significant or material because

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Montgomery County Government

these results are very sensitive to the assumptions made and, in some cases, to the interaction between the assumptions.

Different assumptions or scenarios within the range of possibilities may also be reasonable and results based on those assumptions would be different. As a result of the uncertainty inherent in a forward looking projection over a very long period of time, no one projection is uniquely "correct" and many alternative projections of the future could also be regarded as reasonable. Two different actuaries could, quite reasonably, arrive at different results based on the same data and different views of the future. Due to the limited scope of Mercer's assignment, Mercer will not perform or present an analysis of the potential range of future possibilities and scenarios when requested. At the County's request, Mercer is available to determine the cost of a range of scenarios.

Actuarial assumptions may also be changed from one valuation to the next because of changes in mandated requirements, plan experience, changes in expectations about the future and other factors. A change in assumptions is not an indication that prior assumptions were unreasonable when made.

Because analyses are a snapshot in time and are based on estimates and assumptions that are not precise and will differ from actual experience, contribution calculations are inherently imprecise. There is no uniquely "correct" level of contributions for the coming plan year.

Valuations do not affect the ultimate cost of the Plan, only the timing of contributions into the Plan. Plan funding occurs over time. Contributions not made this year, for whatever reason, including errors, remain the responsibility of the Plan sponsor and can be made in later years. If the contribution levels over a period of years are lower or higher than necessary, it is normal and expected practice for adjustments to be made to future contribution levels to take account of this with a view to funding the plan over time.

Data, computer coding and mathematical errors are possible in the preparation of results involving complex computer programming and thousands of calculations and data inputs. Errors in a valuation discovered after its preparation may be corrected by amendment to this analysis letter.

Assumptions used are based on the last experience study, as adopted by the County and the Board of Investment Trustees. The County is responsible for selecting the plan's funding policy, actuarial valuation methods, asset valuation methods, and assumptions. The policies,

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Mr. Wes Girling
Montgomery County Government

methods and assumptions used in this letter are those that have been so prescribed and are described herein. The County is solely responsible for communicating to Mercer any changes required thereto.

To prepare this letter Mercer has used and relied on financial data and participant data supplied by the County and summarized herein. The County is responsible for ensuring that such participant data provides an accurate description of all persons who are participants under the terms of the plan or otherwise entitled to benefits as of July 1, 2010 that is sufficiently comprehensive and accurate for the purposes of this report. Although Mercer has reviewed the data in accordance with Actuarial Standards of Practice No. 23, Mercer has not verified or audited any of the data or information provided.

Mercer has also used and relied on the plan documents, including amendments, and interpretations of plan provisions, supplied by the County as summarized herein. We have assumed for purposes of this letter that copies of any official plan document including all amendments and collective bargaining agreements as well as any interpretations of any such document have been provided to Mercer along with a written summary of any other substantive commitments. The County is solely responsible for the validity, accuracy and comprehensiveness of this information. If any data or plan provisions supplied are not accurate and complete, the results may differ significantly from the results that would be obtained with accurate and complete information; this may require a later revision of this report. Moreover, plan documents may be susceptible to different interpretations, each of which could be reasonable, and that the different interpretations could lead to different results.

The County agrees to notify Mercer promptly after receipt of this letter if the County disagrees with anything contained in this report or is aware of any information that would affect the results of this report that has not been communicated to Mercer or incorporated therein. This report will be deemed final and acceptable to the County unless the County promptly provides such notice to Mercer.

All costs, liabilities and other factors under the plan were determined in accordance with generally accepted actuarial principles and procedures. Funding calculations reflect the provisions of current statutes and regulations issued hereunder. In our opinion, the actuarial assumptions are reasonable and represent our best estimate of the anticipated experience under the plan.

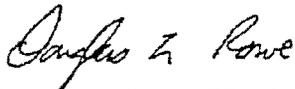
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Mr. Wes Girling
Montgomery County Government

Professional Qualifications

We are available to answer any questions on the material contained in the report, or to provide explanations of further details as may be appropriate. The undersigned credentialed actuaries meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this report. We are not aware of any direct or material indirect financial interest or relationship, including investments or other services that could create a conflict-of-interest, that would impair the objectivity of our work.

Sincerely,



Douglas L. Rowe, FSA, MAAA, EA
Principal



James Baughman, ASA, EA, MAAA
Senior Associate

Copy:
Belinda Fulco, Montgomery County Government

The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.

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OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

March 15, 2011

VIA FACSIMILE (301) 762-7390 and Mail
John Sparks, President, IAFF
Montgomery County Career Fire Fighters Ass'n., Inc.
932 Hungerford Drive, Suite 33A
Rockville, Maryland 20850-1713

VIA FACSIMILE (202) 223-8417 and Mail
Margo Pave, Esquire
Zwërdling, Paul, Kahn & Wolly, P.C.
1025 Connecticut Avenue, N.W., Suite 712
Washington, D.C. 20036-8417

Re: **County Executive Authority to Submit Proposed Operating Budget**

Dear Mr. Sparks and Ms. Pave:

I am writing in response to your letters of March 9 and March 14, 2011, threatening to file prohibited practice charges if the County Executive does not include full funding in his proposed budget of the impasse-arbitrated IAFF and FOP collective bargaining agreements. As you know, the County Executive's recommended operating budget for FY12 does not include full funding for any collective bargaining agreement.

An interpretation of the collective bargaining laws that the County Executive is required to recommend full funding of collective bargaining agreements in his annual recommended operating budget would violate § 303 of the Montgomery County Charter. The County budgetary process is a legislative one, and the County Executive's submission of the annual recommended operating budget to the Council is a part of that legislative process. Thus, the County Executive's submission of the recommended operating budget is a legislative function assigned to the County Executive under Charter § 303.¹ The collective bargaining laws cannot limit this legislative function. The provisions of the Charter that require the County Council to enact collective bargaining laws for firefighters and police officers do not limit the Executive's role in proposing an operating budget.

¹ *Haub v. Montgomery County, Maryland*, 353 Md. 448 (1999) (budget is a legislative enactment); *Judy v. Schaeffer*, 331 Md. 239, 266 (1993) (Governor's budget responsibilities are "quasi-legislative in nature").

John Sparks
Margo Pave
March 15, 2011
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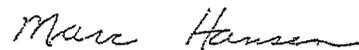
An arbitrator's decision cannot bind the county executive and county council prior to the enactment of the budget. *Maryland Classified Employees Assoc. v. Anderson*, 281 Md. 496 (1977). In *Fraternal Order of Police v. Baltimore County*, 340 Md. 157 (1995), the Maryland Court of Appeals reiterated that a charter county cannot bind itself in the exercise of legislative discretion over compensation of its public employees. The Maryland Attorney General has opined that the courts would likely invalidate a collective bargaining law that purported to limit the budgetary discretion of a county executive in the face of a fiscal emergency. 65 Op. Att'y Gen. 136, 157 (1980).

Two years ago, LRA Andrew Strongin agreed with the County and concluded that the provision in the fire collective bargaining law that purported to require the Executive to recommend full funding of the IAFF collective bargaining agreement was invalid because it conflicted with the Executive's Charter-mandated role in recommending an annual operating budget. The fact that the parties eventually settled that particular case and agreed to have LRA Strongin vacate his award does not diminish the strength or correctness of the underlying argument.

If the IAFF or the FOP file a prohibited practice charge arising out of the County Executive's recommended operating budget, the County will represent these arguments to the LRA. In addition, the County will argue that the Charter provisions purporting to require the County Council to enact collective bargaining laws for firefighters and police officers are invalid under the logic of *Wicomico County Fraternal Order of Police, Lodge 111 v. Wicomico County*, 190 Md. App. 291 (2010).

By April 1, the County Executive will transmit, as required by the collective bargaining laws, the collective bargaining agreements to the Council along with an estimate of the cost for implementing those agreements.

Very truly yours,



Marc P. Hansen
County Attorney

cc: Timothy Firestine, CAO
Joseph Beach, Director, OMB
Joseph Adler, Director, OHR
Steven Sluchansky, Labor Relations Manager, OHR



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
Acting County Attorney

MEMORANDUM

TO: Karen Orlansky
Office of Legislative Oversight

FROM: Amy Moskowitz *AM/EBZ*
Associate County Attorney

Edward B. Lattner *Edward B. Lattner*
Chief, Division of Human Resources & Appeals

VIA: Marc P. Hansen *Marc Hansen*
County Attorney

DATE: October 28, 2010

RE: **Council Authority to Modify Employee Compensation and Benefits**

Due to a structural budget deficit, your office is exploring options to suggest to the County Council on reducing the deficit. Specifically, you asked our office to address whether the County Council may change employees' compensation and benefits, including changes to retirement and health benefits, for both active employees and retirees.

Summary

In general, because retirement benefits are set forth in the County Code, they are contractual obligations protected by the Contract Clause of the United States Constitution. Retirement benefits contained in current collective bargaining agreements may also have Contract Clause protection. The Council may make a retroactive modification that causes a substantial impairment in retirement benefits only if the modification is reasonable and necessary to serve an important public purpose. The Council can avoid any Contract Clause issues by only making prospective changes that do not affect accrued retirement benefits.

In contrast to retirement benefits, the Council has more flexibility in making changes to health benefits because those benefits are not required by County law. The Council resolutions that address retiree health coverage do not create an interest protected by the Contract Clause

because they do not promise any particular level of benefit or subsidy and, unlike the retirement law, they do not state that retirees “vest” or that retiree health benefits are an obligation of the County. While certain health benefits for current employees are provided for in collective bargaining agreements (and for retirees in the FOP agreement), the benefits in those agreements, like the benefits in the Council’s resolutions, are subject to the Council’s decision to annually appropriate sufficient funds to cover the cost of implementing those agreements. The discretionary funding of health benefits stands in marked contrast to the County-mandated funding of retirement benefits, which are held in trust. Thus, even in the face of a multi-year agreement, the Council could decide not to fully fund an agreement in any given fiscal year without violating that agreement or implicating the Contract Clause.

Likewise, the Council enjoys broad discretion in setting salaries for each upcoming fiscal year, unfettered by either the Contract Clause or the applicable collective bargaining agreements. The Council cannot promise salaries beyond the current fiscal year because the Charter restricts Council from appropriating funds beyond the current fiscal year.

I. THE CONTRACT CLAUSE

Article I, § 10, clause 1 of the United States Constitution provides that “No State shall . . . pass any Law impairing the Obligations of Contracts . . .”. It is well settled that, despite the absolutist nature of the Clause, the Constitutional prohibition against impairing the obligation of contracts is not to be read literally. *Keystone Bituminous Coal Ass’n. v. DeBenedictis*, 480 U.S. 470, 502 (1987). The Contract Clause does not prohibit governments from impairing contracts, but limits a government’s right to do so. The courts employ a three-part test for harmonizing the command of the Contract Clause with the necessarily reserved sovereign power of the government to provide for the welfare of its citizens. *Baltimore Teachers Union v. Mayor and City Council*, 6 F.3d 1012, 1015 (4th Cir. 1993).

A. Is There A Contract And Has The Government Impaired That Contract?

First, the court must determine whether there has been impairment of the contract. This inquiry necessarily requires a determination of whether there is a contractual relationship in the first place. *Allstate Ins. Co. v. Kyong*, 376 Md. 276, 299, 829 A.2d 611, 624 (2003). A contractual relationship can arise either from a contract or even a statute “when the language and circumstances [of the statute] evince a legislative intent to create private rights of a contractual nature enforceable against the [government].” *Andrews v. Anne Arundel County*, 931 F. Supp. 1255, 1260 (1996), *aff’d without opinion*, 114 F.3d 1175, *cert. denied* 522 U.S. 1015 (1997) (quoting *United States Trust Co. v. New Jersey*, 431 U.S. 1, 17 n. 14 (1977)). But there is a strong presumption that statutes do not create contractual rights. *Nat’l R. Passenger Corp. v. Atchison, Topeka & Santa Fe R. Co.*, 470 U.S. 451, 465-66 (1985).

1. Contracts and even statutes can create contractual rights protected under the Contract Clause.

The County's retirement plans are set out in Chapter 33 (Articles III and VIII) of the County Code.¹ "[I]n Maryland, as in most states, public employee pension plans embody contractual rights and duties between and employee and the government as employer under the well-settled Contract Clause analytical approach." *Howell v. Anne Arundel County*, 14 F. Supp. 2d 752, 754 (D. Md. 1998); *Frederick v. Quinn*, 35 Md. App. 626, 629-30, 371 A.2d 724, 726 (1977) (statutory pension rights created a contract for purposes of Contract Clause).

Unlike retirement benefits, health benefits and salaries are not set out in law.² But they are addressed in the collective bargaining agreements, along with retirement benefits. Charter Sections 510, 510A, and 511 state that the County Council shall provide for collective bargaining for police officers, firefighters and general government employees. The three collective bargaining laws, set forth in Articles V, VII and X of Chapter 33 of the County Code, provide that salaries, retirement, and benefits are mandatory subjects of collective bargaining. See County Code Sections 33-80, 33-107, and 33-152. All current collective bargaining agreements contain provisions regarding these items.

2. The Contract Clause prohibits only retroactive impairment of contract.

The Contract Clause prohibits only a retroactive impairment of contract, not a prospective impairment.

A very important prerequisite to the applicability of the Contract Clause at all to an asserted impairment of a contract by state legislative action is that the challenged law operate with retrospective, not prospective effect. *Ogden v. Saunders*, 25 U.S. 213, 12 Wheat. 213, 6 L. Ed. 606 (1827). See also *Old Wine in Old Bottles: the Renaissance of the Contract Clause*, (1979) Supreme Court Rev. 95, 99. *United States Trust Co. [v. New Jersey]*, 431 U.S. 1, 52 L. Ed. 2d 92, 97 S. Ct. 1505 (1977)] explicitly restates the existence of statutory retroactivity as a necessary predicate for the applicability of the Contract Clause. *United States Trust Co.*, 431 U.S. at 18 n.15. The opinions in both *United States Trust Co.* and [*Allied Structural Steel Co. v. Spannaus*], 438 U.S. 234, 244, 98 S. Ct. 2716, 2722, 57 L. Ed. 2d 727 (1978)] strongly assert that the challenged legislation involved was retroactive and thus, inferentially, impaired the subject contracts. *United States Trust Co.*, 431 U.S. at 14; *Spannaus*, 438 U.S. at 246, 247, 249. No

¹ Charter Section 401 requires that "[t]he Council shall establish by law a system of retirement pay."

² Salaries for the County Executive and Council members being a notable exception.

Supreme Court decision has been found in this court's research which has invalidated a non-retroactive state statute on the basis of the Contract Clause.

Maryland State Teachers Assoc. v. Hughes, 594 F. Supp. 1353, 1360-1361 (D. Md. 1984). See also *American Nat'l Fire Ins. Co. v. Smith Grading & Paving*, 454 S.E.2d 897, 899 n.2 (S.C. 1995) (internal citations omitted) ("The first inquiry of any Contract Clause analysis is whether the state law has operated as a substantial impairment of a contractual relationship. It is a long-held axiom of Contract Clause analysis that there is no impairment where the statute affects only future contracts between private parties. A non-retroactive statute affecting private contracts is, by definition, a statute that affects only future contracts and does not violate the Contract Clause.")

B. The Contract Clause Prohibits Only A Substantial Impairment Of Contract.

Second, a contract violation occurs only if the government substantially impairs a party's right under the contract. Legitimate expectations of the parties determine whether the impairment was substantial. In *Baltimore Teachers Union v. Mayor and City Council*, 6 F.3d 1012 (4th Cir. 1993) the court noted that the Supreme Court provided little guidance as to what constitutes substantial impairment, but assumes that a substantial impairment occurs "where the right abridged was one that induced the parties to contract in the first place or where the impaired right was on which there had been reasonable and especial reliance."

C. The Government May Substantially And Retroactively Impair A Contract If Reasonable And Necessary To Serve A Legitimate Public Purpose.

Finally, a government may substantially impair a contract if reasonable and necessary to serve a legitimate public purpose. Reasonableness is determined in light of whether the contract had "effects that were unforeseen and unintended by the legislature". Necessity means that the government did not have a less drastic modification available and the government could not achieve its goals without altering the contractual terms. Courts generally defer to the government in determining the reasonableness and necessity of a particular measure, unless a government seeks to impair its own contracts. But even where the government acts to impair its own contracts some degree of deference is appropriate. *United States Trust of New York v. New Jersey*, 431 U.S. 1 (1977); *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234.

II. ANALYSIS

A. Retirement

1. The County's retirement plans.

Charter Section 401 requires a retirement plan. The County's mandatory retirement plans—the Employees' Retirement System (ERS), a defined benefit plan, and the Retirement Savings Plan (RSP), a defined contribution plan—are set forth in County Code Chapter 33, Articles III and VIII.³ Employees hired before October 1, 1994, and represented public safety employees participate in the ERS. At retirement, participants receive a monthly benefit determined by years of service and average final earnings. Within the ERS, different benefit structures exist for various groups of employees (e.g., fire fighters, police officers, employees hired after 1984 receive decreased benefits at social security normal retirement age). County Code Section 33-40 requires the County to fund retirement benefits on an actuarially determined basis. As required by federal law, the funds are held in trust, established under County Code Section 33-58. The funds become ERS assets, not County assets.

Non public safety employees and unrepresented public safety employees hired after October 1, 1994, chose to participate in either the RSP or the Guaranteed Retirement Income Plan (GRIP), a cash balance plan, established within the ERS. In both plans, each pay period, employees generally contribute 4% percent of their salary and the County contributes 8% percent of their salary (unrepresented public safety employees contributions are different). RSP participants invest the contributions in selected investment options. GRIP participants receive earnings at an annual rate of 7.25%. At retirement or termination of employment RSP and GRIP participants receive the value of their account balance. The County deposits the RSP contributions in a trust, established under County Code Section 33-124.

As established under Maryland case law, the retirement plans in the County Code are contractual benefits protected by the Contract Clause. In addition, County Code Section 33-34 specifically provides Contract Clause-like protection against reduction of pension benefits, precluding modifications that reduce existing benefits except as necessary to maintain the fiscal integrity of the system. County Code Section 33-34, which is part of the ERS, provides in part:

It is the policy of the county to maintain a system of retirement pay and benefits for its employees which is adequately funded and insures employees sufficient income to enjoy during their retirement years. Any modifications to such retirement system shall not reduce the overall value of benefits which existed for members immediately prior to such modifications except that benefits may be reduced if necessary to maintain the fiscal integrity of the system after a finding by the county council that such change is necessary.

2. Case law

Maryland courts have held that pension plan statutes contain contractual rights between

³ The County also offers a voluntary deferred compensation plan under Internal Revenue Code Section 457(b) in Article IX of Chapter 33 of the County Code.

employees and the government protected under the Contract Clause.

Because a Contract Clause issue only exists if the legislation operates retroactively and not prospectively, the court in *Maryland State Teachers Association, Inc. v. Hughes*, 594 F. Supp. (D. Md. 1984) stated that there can be no expectation that pension plans can not be altered as to future benefits to be earned by future service. Likewise, in *Howell v. Anne Arundel County*, 14 F. Supp. 2d 752 (D. Md. 1998) the court recognized that the contract clause only protects against retroactive diminution of vested benefits and no contract clause violation occurs when legislation applies prospectively to non vested plan benefits. In these cases, there was no impairment because a reduced COLA would only apply to benefits earned after the effective date of the legislation. In both case, members would have COLA adjustments calculated under a bifurcated formula. In addition to a reduced COLA, *Hughes* involved a number of prospective changes to the retirement system and also included a bifurcated option under which the formula changed from 1.8% of average final compensation to .8% of average final compensation for years of service earned after the effective date of the legislation.

The retroactive diminution of pension benefits is more likely than not a substantial impairment because individuals plan their lives based on pension benefits. *Andrews v. Anne Arundel County*, 931 F. Supp. 1255 (1996), *aff'd without opinion*, 114 F.3d 1175 (1997), *cert. denied*, 522 U.S. 1015 (1997). But the government can modify pension terms as long as the changes do not adversely affect the benefits, or if adversely affected, are replaced with comparable benefits. *City of Frederick v. Quinn*, 371 A.2d 724 (1977).

If the government makes a substantial retroactive impairment to pension benefits, the court will examine the necessity and reasonableness of the government's decision. The necessity and reasonableness of a particular legislative act is a factual inquiry. In *Baltimore Teachers Union v. Baltimore*, the court held that a salary reduction plan adopted to meet immediate budgetary shortfalls did not violate the Contract Clause. While the court found that the plan was a substantial impairment, it concluded that the City's action was reasonable and necessary. Protecting the City's financial integrity was a significant public purpose justifying city action. Although the *Hughes* court held that the plaintiffs did not suffer any impairment because the changes to the pension plan were prospective, the court discussed whether the changes were reasonable and necessary had there been an impairment. The court concluded that due to the financial circumstances of the pension system and the State, the non drastic nature of the impairment and the unavailability of a more moderate course of action, the changes would be permitted, even if retroactive.

However, in *Andrews v. Anne Arundel County*, 931 F. Supp. 1255 (1996), *aff'd without opinion*, 114 F.3d 1175, *cert. denied*, 522 U.S. 1015 (1997), a case involving retroactive changes to the pension plan, the court did not find the County's action to be reasonable and necessary. Although the County argued the legislation was necessary for the "restoration of the actuarial

soundness” of the plan, the court ruled that the County “has failed to make a sufficient showing that the means which it has adopted to address the problem is the least drastic available.” The court also noted that the County acknowledged that an emergency did not exist and that courts have typically upheld “such extreme modifications only in the face of an emergency or temporary situations.”

3. Conclusion

If the Council wanted to change retirement benefits, it could modify benefits for new employees or for current employees as to benefits not yet earned (i.e., for future service). This would comply with the Contract Clause and County Code Section 33-34 because the Council would not reduce benefits “earned,” only future benefits.⁴

In order to substantially impair the benefits for retirees or current employees who have already earned service, the Council would have to find under Section 33-34 that such modifications were reasonable and necessary to “maintain the fiscal integrity of the system.” This also meets the standard established under the Contract Clause (i.e., such a drastic action was necessary and that no less dramatic remedial actions were available).

In addition to the County Code, the collective bargaining agreements contain retirement benefit provisions. These provisions typically call for the County Executive to seek an amendment to Chapter 33 of the County Code to implement the parties’ negotiated changes to the retirement law. The Council may either enact the legislation or decline in which case the retirement benefits do not become effective. But even when the Council does enact the requested legislation, the retirement provisions typically remain in the collective bargaining agreements. By retaining this language in a collective bargaining agreement, the parties arguably intend that the benefits remain for the term of the agreement.

It is unclear whether these collective bargaining agreements, independent of Chapter 33, provide an interest protected by the Contract Clause. This office addressed this issue in the context of Bill 45-10, which proposes changes to the disability retirement provisions in the retirement law. As this office noted, the most conservative course of action would make any changes be effective after the dates of the current collective bargaining agreements (i.e., 2011 and 2012). Any changes before then could be subject to the Contract Clause analysis, requiring the County Council to find that any substantial retroactive modifications are necessary and reasonable for the public good. The change must be due to “effects that were unforeseen and unintended by the legislature” with no other less drastic modification available and the County Council cannot achieve its goals without altering the contractual terms.

⁴ Although certain changes are clearly prospective, other changes are more difficult to classify as prospective or retroactive (e.g., increasing years of service for current employees in order to qualify for full benefits at retirement and changes in the cost of living adjustments (COLA)).

B. Health Benefits

1. The County's health plans

While retirement benefits are required under the Charter, there is no such requirement for health benefits. County Code Section 20-37(b) provides the only authority for the County to offer health benefits:

The county is hereby authorized and empowered to adopt or install a plan or system of group health and life insurance and group hospitalization in cooperation with the employees or any portion thereof in any office, agency or branch of the government of the county and with paid employees of quasi-public corporations engaged in the performance of governmental functions, such as fire departments, whenever it may deem such to be advisable in the interest of the health, comfort and welfare of the county.

Unlike retirement benefits, which are provided in the County Code, the County has established health benefits solely through policy, collective bargaining agreements, and the budget. Currently, only the Summary Description formally describes benefits and eligibility. In addition, since 1994, the Summary Description has contained a provision reserving the right to amend plan terms. The Summary Description for active employees and retirees and all health plan communications state:

The County expects to continue the Plan, but it is the County's position that there is no implied contract between employees and the County to do so, and reserves the right at any time and for any reason to amend or terminate the Plan, subject to the County's collective bargaining agreements. The Plan may also be amended by the County at any time, either prospectively or retroactively.

Over the years the County has modified and otherwise made changes to health benefits (e.g., changes in copayments; change in plan structure). This demonstrates that the County has no contractual obligation to provide specific benefits. However, the County has often modified and changed active employee health benefits in conjunction with collective bargaining.

a. active employee health coverage

With regard to active employees, the County offers health coverage to all permanent employees with merit status (as well as appointed and elected officials). The cost sharing arrangement differs depending upon collective bargaining unit and number of hours worked (e.g., represented employees and full time employees hired before 1994 have a cost share of

20%). Through collective bargaining, the collective bargaining units have negotiated certain benefits, most notably the cost sharing arrangement.

b. retiree health coverage

The County offers retiree health coverage to employees who retire at a certain age with a specified number of years of service. The age and service requirement varies (e.g., age 60 with five years of service for non public safety employees). The cost a retiree pays for the health benefit varies with years of service (e.g., a retiree with 15 years of service pays 30%). Employees hired before 1987 can elect a cost share of 20% for the number of years they participated in group insurance and then pay 100% of the cost. In 1986 and 2002-2003, these retirees had the opportunity to change to the lifetime cost share option, which provides for an employee contribution of 30%.

In 1995 and 1998 two County attorney opinions counseled that the County may amend or discontinue retiree health benefits. The opinions stated that no written contract of the County promised retirees specific benefits at a specific cost for a specific duration without modification and that there was no indication that the County intended to create a contract enforceable against the County. A supplemental 1996 County Attorney opinion noted that although the County Code created limited collective bargaining of retiree health benefits, no collective bargaining agreement provided for retiree health benefits.

However, the current FOP collective bargaining agreement sets forth several provisions regarding retiree health benefits. First, the agreement sets forth the cost split described above and also includes a 30% cost for retirees with a service connected disability. Second a surviving spouse, eligible domestic partner and other dependents eligible for coverage at the time of death may continue retiree coverage as if he/she was the retiree until remarriage. Third, the agreement provides that for employees hired before July 1, 2008, eligibility and contributions for retiree health coverage will remain as is, except as modified by a collective bargaining agreement.

Although no legislation for retiree health coverage exists, in 1986, the Council adopted Resolution 10-2233 providing a cost sharing structure for retiree health coverage. The Resolution notes that the County's policy is to provide health benefits for retirees younger than age 65 with the same benefits as active employees and to provide for retirees age 65 or older a "lifetime" Medicare supplemental plan with a \$1,500 stop loss and 80% coinsurance for prescription drugs after a \$25 deductible (subject to cost of living increases). Subsequently, in 2002, the Council adopted Resolution 14-1168 providing retirees whose cost sharing arrangement would end⁵ an option to change to a "lifetime" cost sharing option. The word "lifetime" in these Resolutions

⁵ Employees hired before 1987 can elect to participate in retiree health insurance at a cost share of 20% for the number of years they participated in group insurance; then they would pay 100% of the cost. In 1986, retirees had the opportunity to change to the lifetime cost share option of 30%.

strongly suggests health benefits will be provided indefinitely and could be viewed as a contractual right. However, it is questionable whether the County intended to create a contractual right, especially in the 2002 Resolution which gave retirees an additional benefit after retirement and they did not perform any additional service in exchange for this benefit. The 1998 County attorney opinion rejects the view that any Resolution could become a contract because the Resolutions lack the requirements of legislation. Finally, the Council did not define what health benefits the County would provide and did not state that benefits would remain unchanged.

2. Case law

There are currently no Maryland court cases addressing Contract Clause rights for health care in the government sector. Most government cases, where there are no collective bargaining agreements, have not found any contractual right to retiree health benefits. Because there is usually little or no statutory authority, the courts examine any statutes or documents and have generally held that the statutes and/or document must clearly set forth an explicit contractual intent. Cases where there are collective bargaining agreements have varying results. Like retirement cases, the analysis involves a factual determination.

Some cases address statutes providing for health benefits. The court in *Davis v. Wilson County*, 70 S.W.3d 724 (Tenn. 2002) held that employees do not automatically have a vested interest in welfare plan benefits such as retiree health care benefits absent "clear and express language" in the law indicating such an intent. In addition the Wilson county's statement in its resolution reserving the right to modify or terminate benefits was inconsistent with any intent to vest or guarantee benefits. Similarly, in *Colorado Springs Fire Fighters Ass'n v. City of Colorado Springs*, 784 P.2d 766 (Colo. 1989) retirees believed that an ordinance providing for payment of retiree health insurance costs was a "contractual, quasi-pension benefit" and a subsequent ordinance reducing the benefits was an unconstitutional impairment of the contract. The court found that the ordinance was not a pension benefit, the amount of the City's payment was determined on an annual basis and the cost and design of the program could change. In addition, the retirees' argument of vested rights to health benefits was inconsistent with the City charter which prohibited imposing future liability upon the City, unless prior appropriation was made. The retirees could not have reasonably relied upon such an interpretation of the ordinance.

Some cases addresses collective bargaining agreements providing health benefits. In *Poole v. City of Waterbury*, 831 A.2d 211 (Conn. 2003), the City, while in a financial crisis, entered into a new collective bargaining agreement and replaced an indemnity plan. Retirees argued that they had a vested right under the collective bargaining agreement at the time of retirement. While the court held that the retirees had a vested right to retiree medical benefits generally, they did not have a vested right in the particular benefits provided in an expired collective bargaining agreement. The court would look to whether the benefits provided to retirees were "reasonably commensurate" with the benefits under the collective bargaining

agreement. In discussing whether there should be a presumption in favor of vesting of retiree health benefits like pension benefits, the court compared the inability to predict or control health insurance costs with the more predictable nature of pension benefits. The court stated it would be “counter to all of the parties’ interests” to construe the collective bargaining agreements to freeze the health benefits provided at retirement. In contrast to *Poole*, the court in *Roth v. City of Glendale*, 614 N.W.2d 467 (Wis. 2000), interpreted collective bargaining agreements which had provisions for subsidizing retiree health care benefits to presume health benefits vest unless the language of the contract provides otherwise. The health benefits are part of retirement benefits which last beyond the life of the contract, in the absence of contract language or extrinsic evidence demonstrating to the contrary.

3. Conclusion

It is doubtful that the Council resolutions regarding retiree health care benefits provide an interest protected by the Contract Clause. The Maryland Attorney General has concluded that the General Assembly’s ability to modify the state’s program of retiree health benefits was not limited by the Contract Clause. In 90 Op. Att’y Gen. Md. 195 (2005), the Attorney General examined the State Employee and Retiree Health and Welfare Benefits Program, Md. Code Ann., State Pers. & Pens. § 2-501 et seq., and concluded that it did not create a contractual obligation under the Contract Clause because “it does not purport to promise any particular level of benefits or subsidy to employees.” *Id.* at 209.

The benefits and subsidy made available to retirees are keyed to those to which current employees are entitled. The statute does not appear to confer any greater right to benefits and a State subsidy to retirees. Nor is there any clear and express language that vests retirees with benefits. We are not aware of any Maryland cases that hold that State retiree health care benefits authorized by statute generally are a contractual right.”

Id. at 209-210. In contrast to the state pension law, the Attorney General noted that the state law regarding retiree health benefits

neither states that a retiree “vests” in Program or subsidy eligibility, nor characterizes any portion of the Program as an “obligation of the State” to retirees. Rather, there is a statutory right, the delineation of which has been largely delegated to the Secretary of [the Department of Budget and Management] and the Governor, and which is subject to change by the General Assembly.

Id. at 217.

The legislatively chosen method of funding retiree health benefits further solidified the

difference between the pension statute and the retiree health benefit statute. The former provided for advance funding of pension benefits, with the creation of a specific fund for each retirement system (made up of government and employee contributions). The funding of the retiree health benefits, with limited exceptions, was left to the Governor's judgment in the proposed annual budget. Although the General Assembly had created special funds to help finance retiree health benefits, the statutes creating those funds did not create any specific obligation to retirees or commit to provide them with health care benefits. *Id.* at 218.⁶ Finally, the materials published to employees and retirees regarding health care benefits explicitly disclaimed any intention to create a contractual obligation to provide health care benefits. *Id.* at 218-19.

The Council's resolutions do not preclude it from making changes to retiree health, especially those employees hired after 1994 because of the disclaimer on all communications. Even for employees hired before 1994, although certain retirees/employees could claim that the Council resolutions create an interest in health benefits protected by the Contract Clause due to the use of the word "lifetime," that claim would be dubious because (a) the County has made many changes to the health plans; (b) the resolutions are not binding law or a contract; and (c) health benefits are subject to annual appropriation. Charter Section 311 restricts the Council from making expenditures beyond funds appropriated. Each year the Council makes appropriations of employee compensation and benefits, including health benefits.

The County's collective bargaining agreements create an interest in health care benefits protected by the Contract Clause only to the extent the County Council adopts those benefits in law. That was the conclusion of the Attorney General in 90 Op. Att'y Gen. Md. 195 (2005) when reviewing state collective bargaining agreements providing for retiree health care benefits. A similar result should apply to the County. The State's collective bargaining law, like the County's collective bargaining law, contemplates that the Governor/County Executive will recommend full funding of all collective bargaining agreements in the annual proposed operating budget.⁷ But, in both the State and the County, the legislature makes the final decision on the budget. Thus, collective bargaining agreements, even multi-year contracts, are subject to annual General Assembly/Council appropriations. Similarly, to the extent the collective bargaining agreements call for legislation (e.g., amendments to the retirement law in Chapter 33), they are dependent upon the legislature to acquiesce to that call. In other words, terms in a collective bargaining agreement that are inconsistent with current law become effective only if the legislature amends the applicable law. *Id.* at 220-21.

⁶ Similarly, the Council created a trust in 2008 to fund retiree health benefits under County Code Section 33-159 in order to benefit from new accounting rules. The County was not required to create the trust, nor is the County required to fund the trust.

⁷ The County Executive is free to recommend a budget to the Council that is in the public's best interest even if the recommendation is does not fully fund a collective bargaining agreement.

For retirees with retiree health benefits set forth in a collective bargaining agreement (presently only the FOP), even if that agreement provides interests protected by the Contract Clause, those interests are limited to cost sharing and/or eligibility because those are the only topics addressed in the FOP collective bargaining agreement. The Council faces no barrier to modifying other aspects of retiree health care. And even with regard to modifying cost sharing and/or eligibility, there is a persuasive argument (with which we concur) that retirees can not rely on benefits beyond the current fiscal year because, as noted above, the collective bargaining agreements are subject to annual appropriation by the Council.

Even if certain retirees/employees have an interest in health benefits protected by the Contract Clause due to the resolutions and collective bargaining agreements, as described in the retirement section of this memo, the Council has the legislative power to make necessary and reasonable modifications when justified as described previously under the contract clause analysis. If the Resolutions and collective bargaining agreements could be viewed as a contract, the issue becomes whether any proposed change substantially impairs that contract or whether it reasonably modifies that contract. In addition, the retirees and employees not covered by the collective bargaining agreement would need to prove that they continued to work in exchange for or in reliance of this promise and there would need to be an analysis of the expectations of the promise to determine if there was any substantial impairment of the contract because of changes. Finally, neither the Resolutions nor the collective bargaining agreement clearly state an indication to enter into a binding contract.

C. Salaries

Neither the Contract Clause, nor the collective bargaining agreements themselves, prohibit the imposition of a furlough or reduction-in-force (RIF), whether imposed in the midst of a fiscal year or planned for a future fiscal year, as was done for FY 11. The County Executive may impose a mid-year furlough or RIF because he retains management rights under the collective bargaining laws permitting the imposition of furloughs or RIF's (under certain circumstances). The collective bargaining laws provide that these management rights are a part of every collective bargaining agreement. Thus, the imposition of a mid-year furlough or RIF (under conditions specified in the contract) does not violate the collective bargaining agreement and, accordingly, could not violate the Contract Clause.⁸ *Fraternal Order of Police Lodge No. 89 v. Canales*, 608 F.3d 183 (4th Cir. 2010) (imposition of furloughs during fiscal year did not violate Contract Clause because relevant collective bargaining laws provided that management right to impose furloughs must be read into every collective bargaining agreement). For the same

⁸ The County Executive has an obligation under the Council's collective bargaining laws to negotiate furlough and RIF procedures and a union could grieve that County's failure to follow those procedures in the imposition of a furlough or RIF. In addition, unless the Council provides otherwise in imposing a furlough or RIF, language in a collective bargaining agreement may impede the Executive's ability to implement a Council-planned furlough or RIF, including the realization of anticipated monetary savings underlying the furlough or RIF.

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reasons, a furlough or RIF planned for a future fiscal year does not violate the Contract Clause. In addition, because the Council appropriates salaries on an annual basis (even where a collective bargaining agreement spans more than one fiscal year), a planned furlough or RIF cannot be a retroactive impairment of any collective bargaining agreement.

As noted above, Charter Section 311 restricts the Council from making expenditures beyond funds appropriated. Each year the Council makes appropriations of employee compensation and benefits, including health benefits. Even though a collective bargaining agreement may span more than one year, the collective bargaining laws provide that the Council's appropriation decision is made on a year-by-year basis, as part of the annual operating budget resolution. See §§ 33-80 (FOP), 33-108 (MCGEO), and 33-153 (LAFF).

Similarly, the same logic allows the Council to impose salary reductions for a future fiscal year. But, salary reductions in the midst of a fiscal year would likely be a substantial retroactive impairment of the collective bargaining agreements, permissible only if the reduction was reasonable and necessary to serve an important public purpose.

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