

Management and Fiscal Policy (MFP) Committee recommendations will be distributed by addendum after the worksession on July 26.

AGENDA ITEMS 21-24

July 27, 2010

Action

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Amendments to County government collective bargaining agreements

Background

Each of these proposed resolutions, introduced by the Council President at the request of the County Executive on July 20, would approve out-of-cycle 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, International Association of Fire Fighters (IAFF), representing members of the fire and rescue bargaining unit, and the Montgomery County Volunteer Fire Rescue Association (MCVFRA), representing the Local Fire and Rescue Departments (LFRD). See ©1-9 (MCGEO Agreement, Summary, MCGEO Agreement on Furlough Procedures, Summary), ©10-17 (FOP Agreement, Summary), ©18-21 (IAFF Agreement, Summary), and ©22-24 (MCVFRA Agreement, Summary). The OMB Fiscal Impact Statement for these Agreements is at ©25-26. The proposed MCGEO Resolution is at ©66-67, the proposed FOP Resolution is at ©68-69, the proposed IAFF Resolution is at ©70-71, and the proposed MCVFRA Resolution is at ©72-73.

Each of these agreements resulted from additional bargaining after the Council indicated its intent to reject certain negotiated items due to fiscal impact in May. None of these agreements were completed during the statutory 9-day period provided for renegotiation after the Council indicates by resolution its intent to reject certain negotiated provisions. Therefore, each of these agreements must be considered an out-of-cycle amendment to a collective bargaining agreement. The Council, in approving the FY11 Operating Budget on May 27, 2010, did not fund any of the provisions in the collective bargaining agreements providing for cost of living increases, service increments, imputed compensation for calculating retirement benefits beyond FY10, additional special pay, tuition assistance, or new equipment for volunteers.

Legal Background

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, and LFRD's §21-6), 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. In addition, the Council must approve any item in a collective bargaining agreement covering the OPT and SLT bargaining unit, the fire and rescue bargaining unit, or the LFRD bargaining unit that "has or may have a present or future fiscal impact." The Council President must set the schedule and deadline for Council action on an out-of-cycle bargaining 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.

Collective Bargaining Agreements

1) **MC GEO:** The Executive entered into two separate agreements with MC GEO amending the current agreement effective July 1, 2010 through June 30, 2011:

- a. Procedures for implementing the furloughs required by the Council in the FY11 Operating Budget. These procedures do not require a change in law, a change in regulation, or have a fiscal impact. Therefore, the furlough procedures are not subject to Council approval.
- b. A one-time award of **26 hours** of compensatory leave to each bargaining unit member on January 1, 2011. This compensatory leave may not be taken when it would require backfilling with overtime and cannot be paid out at any time.

2) **FOP:** The Executive and the FOP entered into a new two-year agreement effective July 1, 2010 through June 30, 2012. The new agreement incorporates all of the existing terms of the two-year agreement from July 1, 2009 to June 30, 2011 with the following amendments:

- a. A one-time award of **26 hours** of compensatory leave to each bargaining unit member on January 1, 2011. This compensatory leave may not be taken when it would require backfilling with overtime and cannot be paid out at any time. In addition, these compensatory leave hours would not count towards the 80-120 hour maximum that can be rolled over from leave year to leave year.
- b. A second year reopener for cash compensation.
- c. A revised tuition assistance program beginning in FY12 with a maximum cost of \$135,000.
- d. Agreement that furlough hours would not result in a loss of retirement benefits. Although the Executive submitted proposed legislation to

implement this provision, the Council enactment of Expedited Bill 18-10 on May 20 already implements this provision for police bargaining unit members.

3) **IAFF:** The Executive and the IAFF agreed to the following amendments to the existing agreement with the IAFF effective July 1, 2010 through June 30, 2011:

- a. On January 1, 2011, a one-time award of **48 hours** of compensatory leave to each bargaining unit member working a 2496-hour work year and a prorated number of compensatory leave hours for each bargaining unit member working a 42-hour or 40-hour work week. This compensatory leave may not be taken when it would require backfilling with overtime and cannot be paid out at any time.
- b. Increases in special pay for CRT, EMT-I and EMT-P pay on July 1, 2010. **This provision was already rejected by the Council in the FY11 Operating Budget approved on May 27, 2010.**
- c. Suspend random alcohol and drug testing for FY11 and FY12.
- d. Eliminate the FROMS Physiology Program effective August 1, 2010, except for the \$100,000 budgeted for equipment. This provision would require the County to eliminate one filled Grade 27 exercise physiologist position.

4) **MCVFRA:** The Executive and the MCVFRA agreed to the following changes in the existing agreement effective July 1, 2008 through June 30, 2011:

- a. Postpone funding for the previously negotiated increase in the nominal fee, gear bags, turn-out boots, and an MCVFRA vehicle.
- b. Recognition of volunteer participation in the development of policy as provided by County Code Chapter 21.
- c. Provide equal discounts on transportation and recreational facilities for active volunteers that the County provides for career fire and rescue employees.

Issues

1. Is the award of compensatory leave subject to Council approval?

What is the legal standard?

The award of compensatory leave is subject to Council approval under each County collective bargaining law if it requires a modification of County law or an appropriation of funds. Each collective bargaining law, except for the Police Labor Relations Law, also requires Council

approval of a provision that “has or may have a present or future fiscal impact.” The Police Labor Relations Law was enacted in Bill 71-81 on April 6, 1982. The collective bargaining law covering the OPT and SLT units was enacted in Bill 19-86 on June 24, 1986 and the fire and rescue collective bargaining law was enacted in Bill 21-96 on July 23, 1996. We could not find any legislative history indicating that this difference in the language concerning Council approval of collective bargaining agreements was intended to create a significant distinction in the Council’s authority. The new language added in later collective bargaining laws appears to be intended to convey the same result – the Council retains the ultimate authority over fiscal matters.

In response to a request from MFP Committee Chair Trachtenberg, the County Attorney wrote a legal opinion addressing the Council’s authority to approve these out-of-cycle agreements. A copy of this legal opinion is at ©74-92. The County Attorney concluded that the Executive can implement the compensatory leave provisions in each of the 3 out-of-cycle collective bargaining agreements without Council approval. *Council staff disagrees with their opinion concerning the Council’s authority over these agreements in several important areas.*

The 3 collective bargaining laws differ on the language used to outline the Council’s authority to approve specific provisions of an agreement. The award of compensatory leave is subject to Council approval under each County collective bargaining law if it requires a modification of County law or an appropriation of funds. Each collective bargaining law, except for the Police Labor Relations Law, also requires Council approval of a provision that “has or may have a present or future fiscal impact.” The County Attorney concluded that all 3 collective bargaining laws essentially mean the same thing. We agree. However, the County Attorney concluded that the language in the Police Labor Relations Law limiting review to items that require “an appropriation of funds” controls and ignores the additional language in the other two laws requiring Council approval of a provision that “has or may have a present or future fiscal impact.” The County Attorney’s construction essentially repeals this additional language by arguing that any other construction would lead to “illogical results.” Although we agree that there is no logical reason to conclude that the Council’s authority to review collective bargaining agreements differs under each law, the most reasonable construction would be to read “has or may have a present or future fiscal impact” into each law. Under this test, the award of compensatory leave would have a present or future fiscal impact, even if the amount cannot be accurately estimated, if it would affect County expenditures or revenues now or in the future.

The County Attorney also concluded that the award of compensatory leave in these out-of-cycle agreements is not in direct conflict with Resolution No. 16-1373, adopted by the Council on May 27, 2010, approving and appropriating funds for the FY11 Operating Budget of the County Government. We disagree again. The Council appropriated funds in the FY11 operating budget to compensate these represented County employees with the salary and benefits established in each provision of the applicable collective bargaining agreement that was approved by the Council. An out-of-cycle agreement cannot grant these employees additional compensation without Council approval. Paid leave of any type is an employee benefit and is part of employee compensation. As the CountyStat report and the OLO analysis shows, compensatory leave reduces the amount of employee services received for the same pay and will eventually cost money due to additional annual leave payouts.

Under the County Attorney's opinion, the compensatory leave is not subject to Council review because it does not require a new appropriation even if it may have a fiscal impact on future expenditures. The fallacy in this argument can be illustrated by the following hypothetical example:

The Executive agrees to a one-time 3% lump sum general wage increase that does not go into an employee's base salary, payable in full on September 1, in a collective bargaining agreement during term bargaining. The Council approves it. The Executive subsequently negotiates an out-of-cycle agreement with the union to convert this 3% lump sum to a 3.5% salary increase put into base salary, effective on January 1. If the Council budget resolution does not expressly prohibit this, the revised out-of-cycle agreement would not require a supplemental appropriation because it can be paid for in the current fiscal year with the money appropriated for the 3% lump sum. However, the 3.5% salary increase will carry over to future years and increase future salary expenditures in future fiscal years.

The County Attorney states that the Council has the authority to set core public policy through legislative acts outside of the collective bargaining laws, including adopting the budget. The County Attorney agrees with Council staff that the Council can place a condition on the appropriation of funds in the budget resolution that would prevent the Executive from implementing an agreement to award compensatory leave if the collective bargaining agreement was submitted during the normal budget process. If the Executive had agreed to this compensatory leave for FY11 during term bargaining for FY11, the Council could have approved or rejected this benefit as part of its deliberations on the FY11 operating budget. If the Council had approved the compensatory leave, the Council would have appropriated funds in the FY11 operating budget to pay for it. If the Council had rejected the compensatory leave, the Council could have prohibited it in the budget resolution. The Council's authority to approve provisions of an out-of-cycle agreement is the same as its authority to approve provisions of a new collective bargaining agreement submitted to the Council during the normal budget process. If it has a fiscal impact now or in the future, the Council must approve it and appropriate funds to implement it.

Does compensatory leave have a present or future fiscal impact?

OMB concluded that the award of compensatory leave has no fiscal impact because "this leave may only be taken when no overtime is required to cover absent employees and it may not be paid out at any time, including at separation." See ©25. Council staff requested the Office of Legislative Oversight (OLO) review this conclusion. OLO disagreed. See ©27-28. OLO concluded that the award of compensatory leave would have a significant future fiscal impact even under the conditions contained in these agreements. First, if an employee uses the compensatory leave instead of annual leave and carries over a larger annual leave balance, then this extra annual leave would be available for cash out at separation. Second, if an employee uses the compensatory leave to increase the employee's time away from work, the employee has reduced availability for work. The County therefore receives fewer services for the same pay.

OLO relied, in part, on a recent presentation from the CountyStat office on workforce availability. See ©29-60. CountyStat found that the 60 hours of compensatory leave granted to

1,022 top of grade employees last year reduced workforce availability by 2.9% at a cost of \$2.8 million. **OLO estimates the fiscal impact of the proposed compensatory leave for all employees to be \$6.93 million.**¹ If the employees use all of the compensatory leave awarded, the resulting time away from work would equal approximately 117 work years.

Despite OMB's conclusion that the award of this compensatory leave does not have a fiscal impact on the County, the Council has the final authority to decide this issue. Whether an employee benefit has a fiscal impact or requires an appropriation rests with the appropriating authority, the Council. In Council staff's opinion, the analysis of both OLO and CountyStat is more reasonable. The Council, as the ultimate fiscal authority under the Charter, should retain jurisdiction to approve collective bargaining provisions awarding compensatory leave. **Council staff recommendation:** the award of compensatory leave is subject to Council approval.

2. Assuming the County Attorney's legal opinion is correct, what are the Council's alternatives?

a. Amend the collective bargaining laws. The Council could amend the 3 collective bargaining laws to provide consistent language describing which provisions of a collective bargaining agreement must be approved by the Council. The amendment could establish a clear standard that a provision taking effect in the next fiscal year (or current fiscal year for out-of-cycle agreements) that may affect County expenditures or revenue in the current fiscal year or in future fiscal years must be approved by the Council.

b. Amend the FY11 Operating Budget Resolution. Although amendments to the budget resolution after the beginning of the fiscal year are unusual, they have been done. The amendment would have to clarify that an out-of-cycle agreement that provides a revised or additional employee salary or benefit must be approved by the Council. Alternatively, the amendment could simply prohibit the negotiated award of compensatory leave.

c. Enact a law prohibiting the agreed to compensatory leave. The Council could enact a new law that prohibits the Executive from implementing the compensatory leave agreements.

If the County Attorney's opinion is correct, the award of compensatory leave is already a contractual obligation. Therefore, any legislative rejection of this provision would be subject to a challenge as an unconstitutional impairment of a contract in violation of Article I, Section 10 of the United States Constitution. However, contract clause analysis is complicated and difficult to predict. It would be an issue that arises only if a Court first concludes that the Council did not have to approve the compensatory leave under County law.

3. Should the Council approve the compensatory leave?

The 26 compensatory leave hours negotiated by MCGEO and the FOP and the 48 compensatory leave hours negotiated by the IAFF would substitute for the elimination of pay raises and the temporary pay reduction through furloughs for FY11. In most years, this would be a reasonable benefit for employees. However, it does not come free. As described above,

¹ The Executive has proposed, subject to Council approval, extending the 26 hours of compensatory leave to non-represented employees. See ©27-28.

compensatory leave will have a future fiscal impact on the County even though it may be implemented in FY11 without a supplemental appropriation. The policy question is whether the Council wants to approve this benefit for its employees and incur the reduction in workforce availability and additional leave payout.

In addition, the Executive has not provided an explanation for the significant additional compensatory leave negotiated with the IAFF. The Council has the authority to approve the leave as negotiated, reject all compensatory leave provisions, or some combination of both. One alternative would be to approve the same 26 hours of compensatory leave for all 3 bargaining units.

Approval of this compensatory leave for all employees can cost \$7 million. It is a difficult cost to identify, but it would exist. Revenue projections for FY11 and beyond have not changed since the Council adopted the FY11 Operating Budget on May 27. Absent an increase in revenue projections, the Council should not approve a future increase in expenditures without a corresponding decrease in other expenditures under a structurally balanced budget policy. **Council staff recommendation:** reject the provisions awarding compensatory leave during FY11.

4. What is the justification for the increase in special pay for EMT and CRT employees in the fire bargaining unit?

Fire and rescue employees with EMT-Is, EMT-Ps, and CRT certifications (Advanced Life Support or ALS providers hired after July 1, 2005) currently receive an additional base salary of \$3000 plus an hourly differential for time spent on an ALS transport unit. The current base and hourly differentials along with the negotiated increased differentials are shown at ©64. In response to questions from Council staff, Human Resources (OHR) provided an explanation for this proposed increase in special pay. See ©64-65. OHR does not report a significant loss of current ALS providers to other jurisdictions, but has had problems recruiting ALS providers internally from current fire and rescue employees. OHR also reports that neighboring jurisdictions have recently advertised for ALS providers with a higher starting salary than the County.

In order to pay for the estimated additional \$199,670 per year for this additional special pay, the agreement proposes to:

- a. eliminate random drug/alcohol testing for fire and rescue employees for FY11 and FY12 for a savings of \$34,280²;
- b. eliminate one filled Grade 27 exercise physiologist position in the Fire and Rescue Occupational Medical Services (FROMS) program as of August 1, 2010 for a savings of \$129,420; and
- c. save the balance through undefined salary lapse.

The Council specifically rejected this additional special pay in approving the FY11 Operating Budget on May 27, 2010 in order to adopt a balanced budget. The Council rejected this provision along with every other increase in regular and special pay for all County employees. In addition, the Council approved a temporary reduction in pay for all County

² OHR's responses to questions about the County's current drug testing policies is at ©93-94.

employees through the adoption of a furlough plan for FY11. **This agreement, if approved, would be the only increase in pay for any County employee in FY11.**

On June 29, the Council, at the request of the Executive, adopted new fiscal policies in Resolution No. 16-1415 providing for a structurally balanced budget where only recurring revenue is used for recurring expenses. This agreement would not follow that policy. The additional special pay would be a recurring expense into the foreseeable future. The proposed savings from the delay in random drug/alcohol testing and undefined salary lapse would not. The savings from terminating the exercise physiologist would only recur if the position is never refilled.

Due to the County's current fiscal problems, an agreement between the IAFF and the Executive to pay for an additional recurring employee benefit should include recurring savings from the elimination of a corresponding employee benefit. This agreement would fail that test also. Undefined salary lapse and the 2-year suspension of random drug and alcohol testing are not employee benefits that should be traded for an increase in special pay. The FROMS program is an employee health and welfare benefit that is also a part of management's fitness for duty program. Without the physiologist, the fire and rescue employees will no longer have access to professional fitness assessments and prescriptions, and there would be no further development or oversight of the fitness program.

Although there is some justification for the increased special pay for these employees, the County's current fiscal position and the ill-advised tradeoffs to pay for the increased special pay do not support this increase. **Council staff recommendation:** reject the additional special pay, the suspension of the random drug and alcohol testing program, and the elimination of the exercise physiologist position.

5. Should the Council approve the tuition assistance agreement with the FOP for FY12?

The Council approved the suspension of the tuition assistance program in FY11 for all employees when it adopted the FY11 Operating Budget on May 27. The agreement with the FOP is the only one of the three agreements that extends beyond FY11. The Executive agreed with the FOP to reinstate the tuition assistance program with a cost cap of \$135,000 for FY12. Although this has no fiscal impact in FY11, it does have a future fiscal impact in FY12. It is, therefore, subject to Council review this year. Even if it is approved this year, the Council must revisit this issue as part of the FY12 Operating Budget process next May.

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 *only* ETAP funds are available for unit members.³ However, the agreement also includes a provision creating a procedure for management and the union to jointly approve a list of courses and institutions offering job-related training that would qualify for tuition assistance. Qualifying job-related training courses

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

from institutions that are not an accredited college or university is part of the JITAP program. Therefore, this provision is internally inconsistent.

The Executive suspended the tuition assistance program during FY10 as a result of an Inspector General report about the abuse of the tuition assistance 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 on 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.

Since the FOP Agreement is the only one to cover FY12, it is likely that bargaining with MCGEO and IAFF later this year will include discussions about tuition assistance for FY12. Although the \$135,000 cap on tuition assistance for the FOP in FY12 may be reasonable compared to past expenditures on tuition assistance, the Council should not commit to additional FY12 TAP expenditures until the revenue projections are updated during the FY12 budget process. The Council should revisit this provision next year as part of the FY12 budget process along with possible agreements with the other unions. The County's newly adopted 6-year balanced fiscal plan shows that FY12, absent increased revenue projections, will be as difficult as FY11. The Council should not approve this provision now and agree to revisit this issue for all employees during the FY12 budget process. **Council staff recommendation:** do not approve the tuition assistance program for FY12 for the police bargaining unit, but agree to revisit this issue in the FY12 budget process.

6. Should the Council approve the additional discounts for recreation and transportation for volunteer fire and rescue personnel?

The OMB fiscal impact statement does not value the loss of revenue expected from providing additional discounts for volunteers. MCVFRA members currently receive 20% off classes, 20% off pool passes, and 50% off weight room fees. The career fire and rescue employees receive 100% discount on these fees. The active volunteers would receive the same 100% discount on these recreation facilities as career fire and rescue employees. There are approximately 300 active volunteers who would qualify for these discounts.

County employees currently receive free Ride-On passes. MCVFRA members currently receive the same free passes pursuant to Code §21-21(g). The agreement would simply reference this current discount. The OMB conclusion that these discounts would not cause a significant loss of revenue appears accurate. **Council staff recommendation:** approve the additional discounts for active volunteers.

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.

<u>This packet contains:</u>	<u>Circle #</u>
Executive Transmittal Memo for MCGEO Agreement	1
MCGEO Agreement and Summary	2
Executive Transmittal Memo for MCGEO Agreement on Furlough Procedures	4
MCGEO Agreement on Furlough Procedures and Summary	5
Executive Transmittal Memo for FOP Agreement	10
FOP Agreement and Summary	11
Executive Transmittal Memo for IAFF Agreement	18
IAFF Agreement and Summary	19
Executive Transmittal Memo for MCVFRA Agreement	22
MCVFRA Agreement and Summary	23
OMB Fiscal Impact Statement	25
OLO Memo on Compensatory Leave	27
CountyStat Presentation on Workforce Availability	29
OHR responses to questions	61
OHR follow-up responses on ALS special pay differentials	64
Proposed MCGEO Resolution	66
Proposed FOP Resolution	68
Proposed IAFF Resolution	70
Proposed MCVFRA Resolution	72
County Attorney Opinion dated July 22, 2010	74
OHR responses to questions about drug testing	93

F:\LAW\TOPICS\Collective Bargaining\10collbar\June 2010 Agreements\MFP & Action Memo.Doc

2/2/10



057754

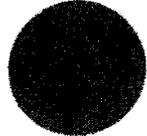
BD
CC
SOP
LL
ME
JP
010

Isiah Leggett
County Executive

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MEMORANDUM

June 21, 2010



2010 JUN 23 AM 9:55
111

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Memorandum of Understanding between the County and MCGEO

I have attached for informational purposes for the Council the Memorandum of Agreement resulting from additional collective bargaining negotiations between the County and the Municipal and County Government Employees Organization/United Food and Commercial Workers Union Local 1994 (MCGEO). Following the Council's resolution of intent, the parties bargained under Section 33-108(j) of the County Code but did not reach a final agreement until after the expiration of the 9-day period provided therein. This agreement reflects changes to the existing Collective Bargaining Agreement effective July 1, 2010 through June 30, 2011. I have also attached a summary of those changes.

Attachments

cc: Joseph Adler, Director, Office of Human Resources

IL: sw

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MONTGOMERY COUNTY GOVERNMENT
AND THE
UFCW LOCAL 1994
MCGEO

On May 4, 2010 the Montgomery County Council indicated its intention to reject funding for Article 41.6 (Imputed Income for Calculation of Retirement Income) of the FY 10 concession collective bargaining agreement between Montgomery County and UFCW Local 1994, MCGEO. As a result the parties have engaged in additional negotiations as mandated by Section 33-108(j) of the Montgomery County Code. In consideration of the above, and in accordance with the decision of the Labor Relations Administrator, (LRA Case No. 10-109-05 May 6, 2010, Furloughs) the parties have agreed to the following matters.

Article 5 Wages, Salaries and Employee Compensation

New Section 5.32. The County represents that going forward it will negotiate in good faith with UFCW Local 1994 MCGEO the what, who, and when of furloughs as ordered by the LRA. In recognition of the time constraints, the Union will, on a one time non-precedential basis waive its right to bargain and accept the decision of the Montgomery County Council on furloughing County government employees. Once the County Council takes action, the Employer and the Union will meet on an expedited basis to negotiate in good faith the procedures required to effect the furloughs.

Article 6. Service Increments New Section (e) *One Time Compensatory Leave Award*. On January 1, 2011, bargaining unit members shall, on a one time basis, be credited with twenty-six (26) hours of compensatory leave. Bargaining unit members must use the twenty-six hours as leave. This leave may only be taken when its use does not require backfill with overtime. Leave credited under this section cannot be paid out at any time including upon separation.

FOR THE EMPLOYER


Isiah Leggett, County Executive

5/29/10
Date

FOR THE UNION


Gino Renne, President

5/20/10
Date

Summary of Memorandum of Understanding between MCGEO and MCG – May 2010

No.	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
1.	5.32/Furlough	County and MCGEO agree to negotiate the what, who and when of furloughs	No	No	No	N/A	
2.	6.1/Service Increments	<p>On 1/1/2011 bargaining unit members will be credited on a one time basis with 26 hours of comp leave to be used only as leave and when overtime to backfill is not required</p> <p>Comp leave will not be paid out upon separation</p>	No	No	No	Yes	

Govt



057753

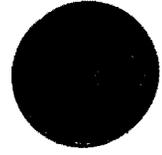
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

BD
CC
SBF
LL
MF
JF
OIO

MEMORANDUM

June 21, 2010



2010 JUN 25 PM 2:55

RECEIVED
MONTGOMERY COUNTY
EXECUTIVE

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Memorandum of Agreement between the County and MCGEO on Furlough Procedures

I have attached for informational purposes for the Council the agreement between the County and the Municipal and County Government Employees Organization/United Food and Commercial Workers Union Local 1994 (MCGEO) relating to furlough procedures. This agreement resulted from a bargaining order issued by Labor Relations Administrator Andrew Strongin that the County has an obligation to bargain with MCGEO "over the what and who and when of furloughs." I have also attached a summary of the agreement. Please note that this agreement is scheduled for a ratification vote by MCGEO bargaining unit employees on June 24, 2010.

Attachments

cc: Joseph Adler, Director, Office of Human Resources

IL: sw

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

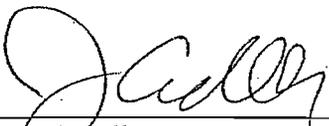
The County Council has approved a progressive furlough schedule, which is predicated on equivalent annual base salary. Effective July 1, 2010 bargaining unit employees will be furloughed as follows: a) base salary less than \$50,000 = 24 hours furlough leave (1.2%); b) base salary \$50,000 to \$100,000 = 40 hours furlough leave (1.9%); c) base salary more than \$100,000 = 64 hours furlough leave (3.1%).

The Montgomery County Government (Employer) and UFCW Local 1994, the Municipal and County Government Employees Organization, (Union) hereby agree to the following procedures for furloughing bargaining unit employees in Fiscal Year 2011.

1. Effective the pay period beginning July 4, 2010 the Employer will deduct an amount equal to 1/24th of value of the total furlough hours for 24 pay periods, regardless of whether the employee has taken all furlough leave by the end of FY11. Employees may elect to take their furlough leave at one time or spread out during the fiscal year, however, the deduction per pay period shall be limited to the 1/24th value of the total furlough hours for 24 pay periods.
2. The employee's annual base salary on July 4, 2010, will be the basis for calculating the payroll deduction.
3. When on furlough leave the employee is not in a pay status. Therefore, furlough leave hours do not count toward an employee's overtime threshold.
4. For benefit purposes, the definition of regular and final earnings will include any amount the employee would have received had the employee not been required to take a furlough. Furloughs will not have a negative impact on retirement benefits accruals. In the event that economic conditions/funding priorities change during FY 11, there will be a reopener to negotiate the potential reimbursement of lost wages due to furloughs.
5. Notwithstanding that furlough leave is a non-pay status, if an employee is on furlough leave, before or after a holiday, they will qualify to receive holiday pay.
6. The deduction for part-time, 10 month employees, employees hired after July 1, 2010, and employees who separate from County service before June 30, 2011 will be pro-rated.

7. Commencing the first pay period in FY 2011 and until such time as the employee has used all required furlough leave, any leave that is taken will automatically be converted to furlough leave.
8. Employee pay advices will state the number of furlough hours taken in the pay period and amount furlough deduction for the pay period.
9. If, by June 4, 2011, an employee has failed to take the required number of hours of furlough leave, it will be regarded as though the leave had been taken and any unused leave will be forfeited.
10. The furloughs will not cause negative impact on health and life insurance benefits.
11. The furloughs will not cause negative impact on leave accruals.
12. For the beginning of Calendar year 2011 only, employees may exceed their annual leave accumulation amount by the amount of furlough hours only.
13. Bargaining unit members will be allowed to change their tax withholdings during this furlough period.
14. Based on operational need, supervisors may determine which employees and how many employees can be furloughed on a particular date. Employees can use their furlough leave hours during holiday periods, based on operational needs. Such furlough requests will be honored on a first come first serve basis except that in the case of a tie when two or more employees made a request at the same time, County seniority shall prevail.
15. This agreement resolves all issues regarding furloughs for Fiscal Year 2011. The agreement may only be opened by mutual consent of the parties. All changes must be agreed to in writing by the parties.
16. The County and UFCW Local 1994 will jointly communicate furlough information to staff.

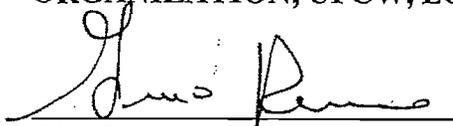
**FOR MONTGOMERY COUNTY
GOVERNMENT**



Joseph Adler
Director, Office of Human Resources

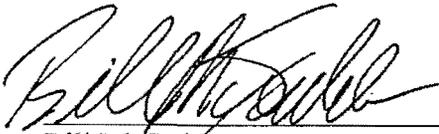
5/26/10
Date

**FOR THE MUNICIPAL AND COUNTY
GOVERNMENT EMPLOYEES
ORGANIZATION, UFCW, LOCAL 1994**



Gino Renne
President, MCGEO Local 1994

5/26/10
Date



Bill McFadden
FCMS Commissioner

5/26/2010
Date

Summary of Memorandum of Understanding between MCGEO and MCG – Furlough Procedures

Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations
Furlough Procedure	<p>Beginning July 4, 2010, the Employer will deduct 1/24th of value of the total furlough hours for 24 pay periods for FY 11.</p> <p>Employees may elect to take the furlough leave at one time or spread it out</p> <p>Payroll will use the employee's base annual salary on July 4, 2010 as the basis for the furlough deduction</p> <p>Furlough leave hours do not count towards overtime threshold</p> <p>Regular and final earnings will include any amount the employee would have received if the furlough had not occurred</p> <p>Furloughs will not have a negative impact on retirement earnings</p> <p>Parties will reopen in the event economic conditions change to discuss lost wages due to furlough</p> <p>An employee will receive holiday pay if they are on furlough leave before or after a holiday</p> <p>Part-time, 10 month employees, employees hired after July 1, 2010 and employees who separate before June 20, 2011 will receive a prorated deduction</p> <p>Starting the first pay period in FY 11, any leave taken shall be converted to furlough leave until the furlough leave amount has been used</p> <p>Pay advices will state the furlough hours taken in a pay period and the furlough deduction</p> <p>By June 4, 2010, any unused leave shall be forfeited and treated as if it was used</p> <p>No negative impact on health and life insurance benefits</p>	No	No	No	Yes

Summary of Agreement between MCGEO and MCG – Furlough Procedures

Page 2

Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations
	<p>No negative impact on leave accruals</p> <p>For calendar year 2011, employees may exceed annual leave accumulation cap by the amount of furlough hours</p> <p>Unit members will be allowed to change tax withholdings</p> <p>Supervisors may determine which and how many employees may be furloughed on a particular date based on operational need; Furlough leave requests during holiday periods shall be granted on a first come first serve basis; if two employees request at same time, more senior employee granted leave</p> <p>Agreement resolves issues for FY 11 furloughs</p> <p>Furlough information to be jointly communicated</p>				

10/14



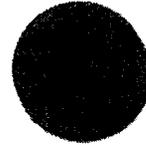
057756

100
cc
SBF
J
OLO
ME
JF
JTF

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM



June 24, 2010

00-11-10 09:38 AM

TO: Nancy Floreen, 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 Memorandum of Agreement resulting from additional collective bargaining negotiations between the County and the Fraternal Order of Police, Montgomery County Lodge No. 35, INC (FOP). Following the Council's resolution of intent, the parties bargained under Section 33-80(h) of the County Code but did not reach a final agreement until after the expiration of the 9-day period provided therein. This agreement terminates the current Collective Bargaining Agreement for the years July 1, 2009 through June 30, 2011, and provides for a new two year successor agreement effective July 1, 2010 through June 30, 2012. This is an out-of-cycle amendment for Council review under Section 33-80(k). Because this agreement has fiscal impact, it requires Council approval. I have also attached a summary of the successor term agreement.

Article 50 of the agreement provides that if a police bargaining unit employee is required to take any furlough, regular earnings for retirement purposes must include any amount the employee would have received had the employee not been furloughed. Legislation to accomplish this change is also being transmitted to Council today.

Attachments

cc: Joseph Adler, Director, Office of Human Resources
J. Thomas Manger, Chief of Police

IL: sw

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

The Montgomery County Government ("County") and the Fraternal Order of Police Montgomery County Lodge No. 35, Inc. ("FOP"), hereby agree to terminate the current Collective Bargaining Agreement (Agreement) for the employees in the Police bargaining unit for the years July 1, 2009 through June 30, 2011 effective June 30, 2010, and further agree to a new two (2) year successor agreement effective July 1, 2010 through June 30, 2012. This Memorandum of Agreement constitutes the successor term agreement. The existing terms of the current 2009 - 2011 Agreement are incorporated in this successor 2010-2012 agreement, subject to the following amendments:

Article 21 Compensatory Leave

Add as new Section F.

Section F. *One Time Compensatory Leave Award.* On January 1, 2011, bargaining unit members shall, on a one time basis, be credited with twenty-six (26) hours of compensatory leave. Bargaining unit members must use the twenty-six hours as leave. This leave may only be taken when its use does not require backfill with overtime. Leave credited under this section cannot be paid out under the procedure outlined in Section A above. These hours will not count towards the 80-120 hour maximum and can be rolled from leave year to leave year. Leave credited under this section will not be paid out upon separation.

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 39 Tuition Assistance

Section A. All members of the bargaining unit shall be entitled to receive tuition assistance at the level provided by the Montgomery County Tuition Assistance Program in effect when they apply. The County represents that it will maintain the program during the life of this Agreement **subject to the provisions listed below.** [See MOA: *Redeployment, April 2005*]. Restating that JITAP is not available to unit members. However, this restatement is not intended to diminish any Police ETAP benefit.

1. The Employer must approve tuition assistance for unit member development related to the unit member's current job functions or those of ~~another County position~~ **the police career ladder in the same job series or profession or a degree which qualifies a unit member for a career position.**
2. The Employer must approve tuition assistance for tuition and compulsory fees such as matriculation, registration, laboratory, and library fees.
3. The Employer must not approve tuition assistance for books, supplies, or extra fees such as late registration and parking.
4. A unit member receiving tuition assistance must attend the activities for which they are receiving tuition assistance during the unit member's off duty hours.
5. A unit member who received tuition assistance must complete the training with a passing grade, or the employee must reimburse the County for the amount of the County's tuition assistance. **Final grades must be provided to the Office of Human Resources upon completion of the course.**
6. **When using tuition assistance for college courses, the courses must be taken at an accredited college or university as recognized by the United States Department of Education or the Higher Education Accreditation Commission.**
7. **The parties agree to create a list of courses and institutions which ~~offer nationally recognized~~ are representative of the type of law enforcement or job-related training that qualifies for tuition assistance. Bargaining unit members may use tuition assistance for such courses. ~~offered by institutions on this list.~~ In the event that either party ~~requests to add an institution to this list,~~ disputes any non-accredited course or institution for qualification, the parties agree that such a ~~request~~ dispute will be reviewed by a panel composed of equal numbers of Employer and Bargaining Unit representatives. If the panel cannot reach consensus on the ~~proposed addition~~ dispute, the matter will be referred to a mutually agreed upon third party educational expert with a background in law enforcement for final determination.**
8. **The parties agree to seek funding from County Council in the amount of \$135,000 for FY 12. Once this amount is exhausted in FY 12, the County will not approve any additional TAP requests for the remainder of the fiscal year.**

* * *

Article 47 Duration of Contract

This agreement shall become effective on July 1, 2009, 2010 and terminate on June 30, 2012, unless extended to June 30, 2013 pursuant to Article 31 *Reopener*.

Article 50 Reduction-In-Force and Furlough

Amend the Retirement Law and Bill 18-10:

Sec. 1. Sections 33-35, 33-113 and 33-128 are amended as follows:

33-35. Definitions

In this Article the following words and phrases have the following meanings:

* * *

If a member is required to take any furlough, as defined in personnel regulations adopted under Section 33-7(b) OR A COLLECTIVE BARGAINING AGREEMENT, regular earnings must include any amount the member would have received if the member had not been required to take any furlough.

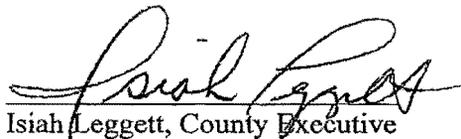
Other Provisions:

The parties may agree to a joint committee on other economic benefits.

Whenever the Employer sends correspondence or documents required to implement, amend or modify the terms of a negotiated CBA or any provisions thereof, FOP 35 will be sent a copy at the time it is sent to Council.

Increments will not be paid if not funded by the County Council.

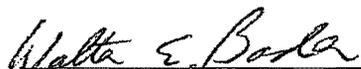
FOR THE EMPLOYER:



Isiah Leggett, County Executive
Montgomery County, Maryland

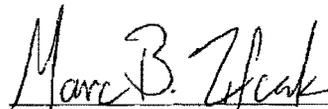
Date 6/22/10

FOR THE UNION:



Walter E. Bader, Chief Negotiator
FOP Lodge 35, Inc

Date 06-16-10



Marc B. Zifcak, President
FOP Lodge 35, Inc

Date 6/16/2010



Montgomery County Lodge 35, Inc.

18512 Office Park Drive
Montgomery Village, MD 20886

Phone: (301) 948-4286

Fax: (301) 590-0317
June 2, 2010

Mr. Joseph Adler
Director
Office of Human Resources
50 Monroe Street
Rockville, Maryland 20850
Montgomery County, Maryland

Dear Joe:

This is to confirm our understanding that, as a result of extended negotiations subsequent to the county council straw vote, Contract Article 39 has been amended and, further, that for Tuition Assistance applications for courses starting during FY 11, the Employer is not obligated to approve funding for those courses should no funding for tuition assistance be appropriated by the county council for FY 2011.

It is further agreed and understood that courses taken outside the United States must meet the requirements of Article 39, Section A.1., i.e., the course must be "related to the unit member's current job functions or those of the police career ladder in the same job series or profession or a degree which qualifies a unit member for a career position."

Sincerely,

Walter E. Bader
Chief Negotiator



Montgomery County Lodge 35, Inc.

18512 Office Park Drive
Montgomery Village, MD 20886

Phone: (301) 948-4286

Fax: Jun 2010 (301) 290-0317

Mr. Joseph Adler, Director
Office of Human Resources
50 Monroe Street
Rockville, Maryland 20850
Montgomery County, Maryland

Dear Joe:

In an effort to avoid disputes concerning tuition assistance, in agreeing to changes to Article 39 *Tuition Assistance*, and with appreciation for your interest in administering Article 39 consistent with its intent, we note the following:

1. **Noting in this agreement affects the outstanding grievances relating to tuition assistance or any other matter that occurred prior to July 1, 2010;**
2. **We have agreed to funding limitations for FY 11 and FY 12 only. Funding for FY 13 and subsequent years will be consistent with established past practice.**
3. **Except for the modifications to Section A, paragraphs 1, 5, 6, 7, and 8 (for FY 12), and the sideletter, no other changes are made and prior grievance resolutions still apply to the extent they are not in direct conflict with these changes. (In stating this, we do not believe that any are in conflict, and suggest that one prior grievance case supports the county's current position concerning ineligibility of certain religious coursework.)**
4. **Profession means "law enforcement".**
5. **"A degree which qualifies a unit member for a career position" means, for example, a Bachelor's or Master's degree, from an accredited institution. It includes any course that would qualify an individual to receive that degree.**
6. **Final grades must be provided to the Office of Human Resources upon completion of the course. A course is considered complete when final grades are received.**
7. **Courses and institutions which are representative of the type of law enforcement or job-related training that is not college accredited but otherwise qualifies for tuition assistance include, but are not limited to Reid Associates Interviewing and Interrogation Techniques. We will provide you a list of what we consider to be proper examples.**

Sincerely,

Walter E. Bader
Walter E. Bader
Chief Negotiator

Summary of Memorandum of Understanding between FOP and MCG June 2010

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
1.	21 / Compensatory Time	<p>On 1/1/2011 bargaining unit members will be credited 26 hours of comp leave to be used only as leave and when overtime to backfill is not required</p> <p>Leave will not be paid out upon separation</p>	No	No	No	Yes	
2.	31.F / Reopener	<p>Parties shall reopen agreement during first year of the contract, on or before 11/1/2010, to negotiate cash compensation for FY 12</p>	No	No	No	Yes	
3.	39.A / Tuition Assistance	<p>Tuition assistance funds must be used for member's current job functions or those functions related to the police career ladder in same job series or profession or degree which qualifies member for a career position.</p> <p>Final grades must be submitted to OHR upon completion of course.</p> <p>College courses must be taken at an accredited college or university.</p> <p>Parties agree to create a list of courses and institutions related to law enforcement or job related training that qualifies for tuition assistance.</p> <p>In the even either party disputes a course, a panel made of equal numbers of Employer and Bargaining Unit representatives shall review. In the event no consensus can be reached a 3rd party educational expert with a background in law enforcement shall make final determination.</p>	No	No	No	Yes	

Summary of Memorandum of Understanding between FOP and MCG June 2010

Page 2

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
4.	39.A / Tuition Assistance	FY 12 budget for FOP tuition assistance funds shall be \$135,000	Yes	Yes	No	No	
5.	39.A / Tuition Assistance	Side Letter: Course outside of the US must meet requirements Side Letter: FOP to provide letter indicating their understanding that if no funding for tuition assistance is provided by Council for FY 11, the Employer will not approve tuition assistance for any bargaining unit for FY 11	No	No	No	Yes	
6.	47/ Duration of Contract	July 1, 2010 through June 30, 2012	No	No	No	N/A	
7.	50 / Furlough	Amend Retirement Law and Bill 18-10 In the event of a furlough, regular earnings must include any amount the employee would have received as if the furlough had no occurred	No	No	Yes	Yes	
7.	Other provisions	Parties may agree to a joint committee on economic benefits Any correspondence sent to Council in regards to implement, amend or modify the CBA, the Union will receive a copy Increments will not be paid if not funded by the Council	No	No	No	Yes	

Conf



BD
cc
SCF
LA
MF
MD
JF

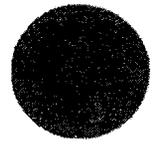
Isiah Leggett
County Executive

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MEMORANDUM

June 21, 2010

057657



TO: Nancy Floreen, 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 Memorandum of Agreement resulting from additional collective bargaining negotiations between the County and the Montgomery County Career Fire Fighters Association, International Association of Fire Fighters, Local 1664, AFL-CIO (IAFF). Following the Council's resolution of intent, the parties bargained under Section 33-153(p) of the County Code but did not reach a final agreement until after the expiration of the 9-day period provided therein. This agreement reflects changes to the existing Collective Bargaining Agreement effective July 1, 2010 through June 30, 2011. This is an out of cycle amendment for Council review under Section 33-153(s). Because this agreement has fiscal impact and, in fact, is contrary to budget resolution ¶ 18, it requires Council approval. I have also attached a summary of those changes.

Attachments

cc: Joseph Adler, Director, Office of Human Resources
Richard Bowers, Chief, Fire and Rescue Service

IL: sw

2010 JUN 21 PM 3:54
2010 JUN 21 PM 3:54

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

Montgomery County Government (Employer) and the Montgomery County Career Fire Fighters Association, International Association of Fire Fighters, Local 1664, AFL-CIO, (Union) have met pursuant to Section 33-153(p) of the Montgomery County Fire and Rescue Collective Bargaining Law and have reached the following agreements. These agreements shall be effective as of July 1, 2010 unless otherwise stated.

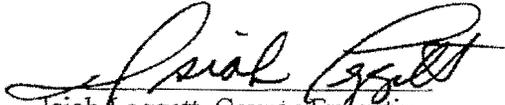
1. *Compensatory Leave.* Article 49 of the parties' existing Collective Bargaining Agreement is amended to include a new Section 49.5 as follows:
Section 49.5 Additional Compensatory Leave Credit
Effective January 1, 2011, each bargaining unit employee who is assigned to a 2,496-hour work year and who: (1) will not receive a service increment in FY 2011 or (2) will not receive a longevity step increase in FY 2011 shall be credited with 48 hours of compensatory leave. Effective January 1, 2011, each bargaining unit employee who is assigned to a 42-hour or 40-hour workweek and who: (1) will not receive a service increment in FY 2011 or (2) will not receive a longevity step increase in FY 2011 shall be credited with a prorated number of hours of compensatory leave. Leave under this section may not be used if it causes the need to backfill with overtime. Leave granted under this section cannot be paid out under the procedure outlined in 49.1 above and will not apply to the maximum carryover described therein. These hours may be rolled over from leave year to leave year. Leave granted under this section will not be paid out upon separation.
2. The parties agree to a side letter stating: Neither the County Executive nor any of his representatives shall publicly or privately oppose the Union's proposal submitted to the County Council to amend Expedited Bill 16-10 so that the 4% FY '10 imputed GWA for retirement purposes shall apply to bargaining unit employees who have on file before July 1, 2010 an application for disability retirement benefits that is approved after July 1, 2010.
3. *Special Pay Differentials.* The increases in CRT, EMT-I and EMT-P pay differentials scheduled to take effect the first full pay period on or after July 1, 2010 pursuant to Section 17.2(A-D) of the parties' existing Collective Bargaining Agreement shall go into effect as scheduled.
4. The parties agree to a side letter stating: Random alcohol/drug testing of bargaining unit employees shall be suspended in FY '11 and FY '12. No random alcohol/drug testing program applicable to bargaining unit employees shall be implemented in any fiscal year following FY '12 unless the Employer and the Union negotiate an agreement as part of normal term negotiations

covering the decision to implement a testing program and the procedures of such program.

5. The Employer agrees to eliminate the FROMS Physiology Program, effective August 1, 2010, with the exception of the \$100,000 budgeted for the purchase of equipment. The Employer will recommend that the savings from the elimination of the FROMS Physiology Program will be used to fund the Special Duty Differentials described in Section 3 above.

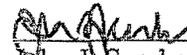
Any claimed violation of any section of this Memorandum of Agreement (either in whole or in part) may be grieved and arbitrated in accordance with Article 38 (Contract Grievance Procedure) of the parties' existing Collective Bargaining Agreement.

FOR THE EMPLOYER:


Isiah Leggett, County Executive

Date 5/29/2010

FOR THE UNION:


John J. Sparks, President

Date May 19, 2010

Summary of Memorandum of Understanding between IAFF and MCG – May 2010

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations
1	17, Special Duty Differentials	Effective the first full pay period on or after: 7/1/2010 - Increase the Cardiac Rescue Technician pay differential to \$4,515; increase the Emergency Medical Technician – Paramedic as follows: 0-4 years: \$6,080, 5-8 years:\$7,391, and 8+ years: \$8,701; and increase the CRT, EMT-I, and EMT-P hourly differential by \$2.00	Yes*	Yes*	No	Yes
2	49.5, Compensatory Leave	On 1/1/2011 bargaining unit members working 2,486 hour work year will be credited 48 hours of comp leave and unit members working 40/42 hour work week will be credited a prorated number of hours to be used only as leave and when overtime to backfill is not required These hours will roll over from leave year to leave year Leave will not be paid out upon separation	No	No	No	Yes
3	Sideletter	County Executive and his representatives shall not oppose union's proposal to amend Bill 16-10 to allow for unit members filing for disability retirement prior to 7/1/2010 to receive the 4% imputed GWA	No	No	No	Yes
4	Sideletter	Random drug/alcohol testing program shall be suspended for FY 11 and FY 12 Union and Employer must negotiate an agreement for random testing for fiscal years after FY 12	No	No	No	Yes
5		Employer agrees to eliminate the FROMS Physiology Program effective 8/1/2010 with the exception of \$100,000 budgeted for the purchase of equipment. Employer to recommend that savings from this elimination be used to fund the special duty differentials listed in #1 of this table	No	Yes	No	Yes

***Savings from the elimination of the FROMS Physiology Program will fund the Special Duty Differentials**



057755

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

June 21, 2010

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Memorandum of Agreement between the County and MCVFRA

I have attached for informational purposes for the Council the Memorandum of Agreement resulting from additional collective bargaining negotiations between the County and the Montgomery County Volunteer Fire Rescue Association (MCVFRA) following Council action under Section 21-6(q) of the County Code. This agreement reflects changes that will be made to the existing Collective Bargaining Agreement effective July 1, 2008 through June 30, 2011. I have also attached a summary of the changes.

Attachments

cc: Joseph Adler, Director, Office of Human Resources
Richard Bowers, Chief, Fire and Rescue Service

IL: sw

1001 JUN 25 11 21 55

BD
CC
SF
LL
ME
JF
DIO
MD

County Comprehensive Proposal
5/20/10
11:00 am

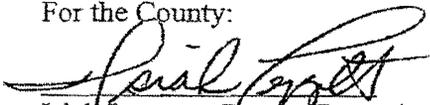
MEMORANDUM OF AGREEMENT
BETWEEN
THE MONTGOMERY COUNTY GOVERNMENT
AND THE
MONTGOMERY COUNTY VOLUNTEER FIRE RESCUE ASSOCIATION

The Montgomery County Government ("County") and the Montgomery County Volunteer Fire Rescue Association ("MCVRA"), hereby agree to amend the parties' current directly negotiated agreement (Agreement) effective July 1, 2008 – June 30, 2011, as follows:

1. The parties agree to postpone the provisions of the agreement that the County Council did not fund, including the increase to the nominal fee, the gear bags, the turn-out boots, and the funds for an MCVFRA vehicle. These provisions will not be effective during FY11. Any postponed or renegotiated provisions are subject to the appropriation of funds by the Council.
2. The County agrees to abide by the provisions concerning volunteer participation in the development of policy contained in Chapter 21 of the Montgomery County code, including Sections 21-3(f) and 21-6(e).
3. The parties agree that, for the purposes of administering the transportation and recreational facilities discounts enumerated in Section 21-21(g) of the Montgomery County Code, active volunteers will be eligible to receive the same discounts offered to career Fire Rescue personnel.

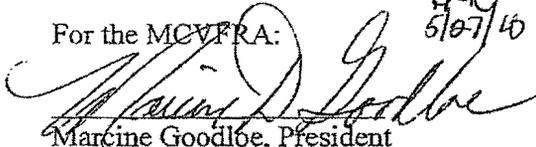
These provisions constitute a comprehensive package proposal.

For the County:


Isiah Leggett, County Executive

Date 6/2/10

For the MCVFRA:


Marcine Goodloe, President

Date 5/20/10

Summary of Memorandum of Understanding between MCVFRA and MCG – May 2010

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations
1	Provisions not funded for FY 11	Parties agree to postpone the increase to the nominal fee, gear bags, turnout boots, and funds for MCVFRA vehicle for FY 11	No	No	No	Yes
2	11, Uniform and Equipment	County agrees to include volunteers in policy creation process as outlined in Chapter 21, Sections 21-3(f) and 21-6(e)	No	No	No	Yes
3	Recreation Facilities	Volunteers will receive discounts for recreational facilities and transportation as provided to career Fire/Rescue under Section 21-21(g)	No	Slight loss of revenue	No	Yes



057762

has - BD
CC
DRF
HSS - LL
MD
SUF
MF
OLO

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

June 24, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Fiscal Impact Statement – FY11 Memoranda of Understanding (MOU) between Montgomery County Government and Municipal and County Government Employees Organization (MCGEO), Local 1994, Fraternal Order of Police (FOP), Lodge 35, International Association of Fire Fighters (IAFF), AFL-CIO, Local 1664, and Montgomery County Volunteer Fire Rescue Association (MCVFRA)

JUN 25 10 11 21

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject labor agreements.

The County Executive's FY11 recommended operating budget did not fund general wage adjustments, service increments, or tuition assistance for County government employees. Since the Council voted unanimously to reject these and other provisions that would have required an appropriation of funds, it designated a representative to meet with the parties and present the Council's views in further negotiations. This fiscal impact statement concerns the MOUs resulting from those discussions.

FY11 MCGEO and FOP MOUs

On January 1, 2011, MCGEO and FOP bargaining unit members will receive, on a one-time basis, twenty-six (26) hours of compensatory leave¹. There is no fiscal impact due to this provision because this leave may only be taken when no overtime is required to cover absent employees and it may not be paid out at any time, including at separation.

FY11 IAFF MOU

The individual provisions noted below have a fiscal impact, but the net impact requires no additional appropriation.

¹ Please note that this leave will be extended to non-represented and Management Leadership Service employees.

Office of the Director

- Section 17.2, A-D: The increases in certain special pay differentials for cardiac rescue technicians and emergency medical technicians for FY11 provided for in the collective bargaining agreement with IAFF, as originally negotiated, shall go into effect the first full pay period on or after July 1, 2010. Relative to the budget approved by the County Council, the estimated FY11 cost for the increased special pay differentials is \$199,670.
- Random Alcohol/Drug Testing: This program is suspended in FY11, which will save an estimated \$34,280 in FY11.
- Fire and Rescue Office of Medical Services (FROMS) Physiology Program: This program will be eliminated, effective August 1, 2010, resulting in the abolishment of one Exercise position and the cessation of the peer fitness component of the program, for a total savings of \$129,420.

The remaining \$35,970 in required savings will be realized through increased lapse.

FY11 MCVFRA MOU

In FY11, the same 100% discount on all recreation fees received by career Fire and Rescue Service personnel will be extended to active MCVFRA members. This increases a partial discount¹ to a full discount for recreational facility classes, pool passes, and weight room fees. The impact on revenues can not be quantified because it is not known how many of the eligible volunteers will take advantage of this benefit but is not expected to be significant.

JFB:lob

- c: Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
Joseph Adler, Director, Office of Human Resources
Thomas Manger, Chief, Montgomery County Department of Police
Richard Bowers, Chief, Montgomery County Fire and Rescue Service
Dominic Del Pozzo, Montgomery County Fire and Rescue Service
Alex Espinosa, Office of Management and Budget
John Cuff, Office of Management and Budget
Blaise DeFazio, Office of Management and Budget

¹ MCVFRA members are currently entitled to receive partial recreation discounts of 20% off classes, 20% off pool passes, and 50% off weight room fees.

MEMORANDUM

July 7, 2010

TO: Robert Drummer, Senior Legislative Attorney
FROM: Aron Trombka,^{AT} Senior Legislative Analyst, OLO
SUBJECT: Fiscal Impact of Compensatory Leave Awards

This memo responds to your request for comments on the fiscal impact of awarding compensatory leave. As observed in the CountyStat presentation “Measuring County Workforce Availability” (June 18, 2010), compensatory leave is one of the factors that makes workers unavailable to perform their duties. According to CountyStat, worker unavailability, in turn, has a real fiscal impact on the County (see http://www.montgomerycountymd.gov/content/exec/stat/pdfs/6_18_2010_ppt.pdf.) A CountyStat slide showing a calculation of the cost of compensatory leave appears on the next page.

Approximately 8,700 County Government employees would receive additional compensatory leave as a result of the proposed Memoranda of Agreement (MOAs). IAFF members would receive 48 hours of compensatory leave. FOP, MCGEO, and non-represented¹ employees would receive 26 hours of compensatory leave.

As shown in the table below, the compensatory leave provided by the MOUs would have an approximate value of about \$7 million (based on an assumed average annual salary of \$60,000 for all employees receiving the compensatory leave).²

	IAFF	FOP	MCGEO, Non-Represented	
Assumed Annual Salary	\$60,000	\$60,000	\$60,000	
Hourly Salary	\$24.04	\$28.85	\$28.85	
Hours of Compensatory Time	48	26	26	
Number of Employees	1,000	1,000	6,700	
Annual Cost	\$1,150,000	\$750,000	\$5,030,000	\$6,930,000

¹ In a July 6 memorandum, the OHR Director announced his intent to provide 26 hours of compensatory leave to non-represented employees (excluding, the County Executive, The Chief Administrative Officer, the Special Assistants to the County Executive, and appointed department directors).

² For the purpose of this quick analysis, I used a conservative estimate of average annual salary. The actual mean salary for IAFF and other employees likely is higher than \$60,000.

The County will experience the fiscal impact of the proposed award of compensatory leave in one of two scenarios. For some employees, the award of additional compensatory leave will not increase the amount of paid time leave taken; for other employees, the award of additional compensatory leave will increase the amount of paid time off. Under either scenario, the County will experience a fiscal impact.

Scenario #1: The award of compensatory leave does not affect the amount of leave taken by an employee. In this case, the employee elects to use compensatory leave as an alternative to using annual leave. As a result, the employee would then carry a higher annual leave balance that would be available for cash out at the end of his/her employment. This fiscal impact represents a newly accrued liability assumed by the County and will eventually result in direct expenditure of public dollars.

Scenario #2: The award of compensatory leave induces an employee to increase the amount of time away from work. In this case, the employee decides to use compensatory leave in addition to his/her earned annual leave. As a result, the employee would have reduced “availability” (to use the CountyStat term) to perform his/her duties. County ratepayers would pay for this leave time but would receive no service during those hours. This fiscal impact does not affect the amount of public dollars expended but represents a measurable reduction in service received for government expenditures. Should employees use all of the proposed compensatory time offered in the MRAs, the resulting time away from the job would equal approximately 117 work years.

	IAFF	FOP	MCGEO, Non-Represented	
Comp. Hours Per Employee	48	26	26	
Number of Employees	1,000	1,000	6,700	
Total Comp Hours	48,000	26,000	174,200	
Work Hours Per Work Year	2,496	2,040	2,040	
Number of Work Years	19	13	85	117

The decisions of individual employees will determine the allocation of the fiscal impact between newly accrued liability and loss of service. In any case, the total value of the awards of compensatory leave in the proposed MOAs equals approximately \$7 million.

Measuring County Workforce Availability

June 18, 2010



CountyStat Principles

- **Require Data Driven Performance**
- **Promote Strategic Governance**
- **Increase Government Transparency**
- **Foster a Culture of Accountability**



Agenda

- **Welcome and introductions**
- **Measuring workforce availability**
 - Methodology
 - FY10-Q3 availability
- **Discussion of policies about and use of workforce availability**
 - Budget process
 - Personnel management
- **Wrap-up**



Meeting Purpose

- **Develop a better understand of County workforce availability in Montgomery County and develop a standard for tracking this variable.**

Why Workforce Availability is Important

- **Small changes in availability can have large effects on workload and personnel needs**
 - DOCR has documented the effects of changes in availability on their personnel needs for custody and security of inmates

Across all employees, just a 1% increase in availability would add the equivalent of 97.8 positions to the workforce



Tracking Workforce Availability Methodology

- **Workforce availability measures the percent of total available hours that personnel can spend on mission-related activities**
 - Quarterly reports show availability across all department employees each quarter

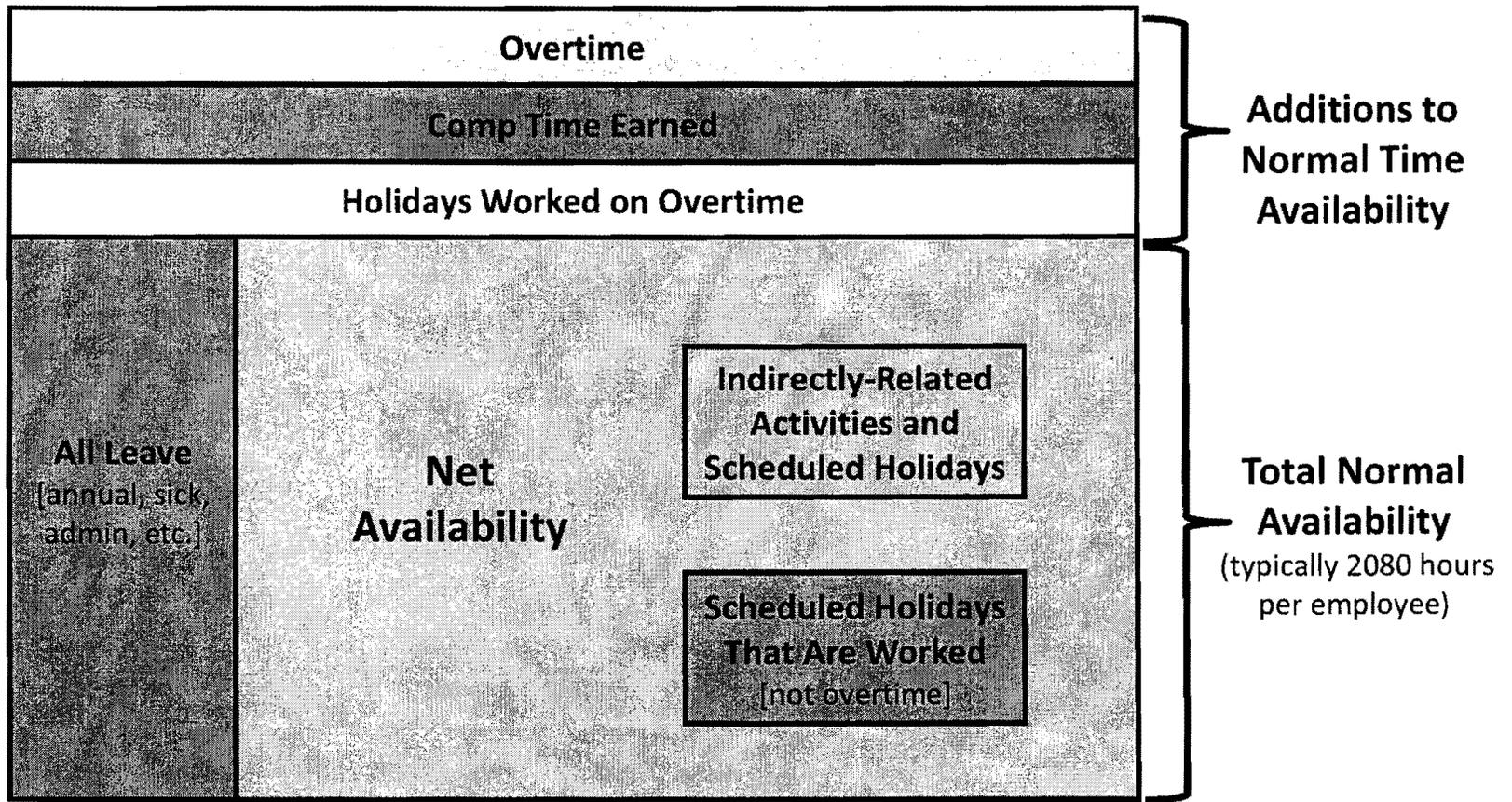
- **Factors the reduce availability**
 - Absenteeism
 - (annual leave, sick leave, administrative leave, scheduled holidays, etc.)
 - Declared emergencies or government shut-down
 - Indirectly-related activities (training, mandated breaks, etc.)

- **Factors that increase availability**
 - Positions that are required to work during scheduled holidays
 - Purchases of extra time such as overtime and comp time

Workforce availability is shown as a percent of total available hours.
For most personnel, total available hours are
2080 hours = 40 hours per week * 52 weeks per year



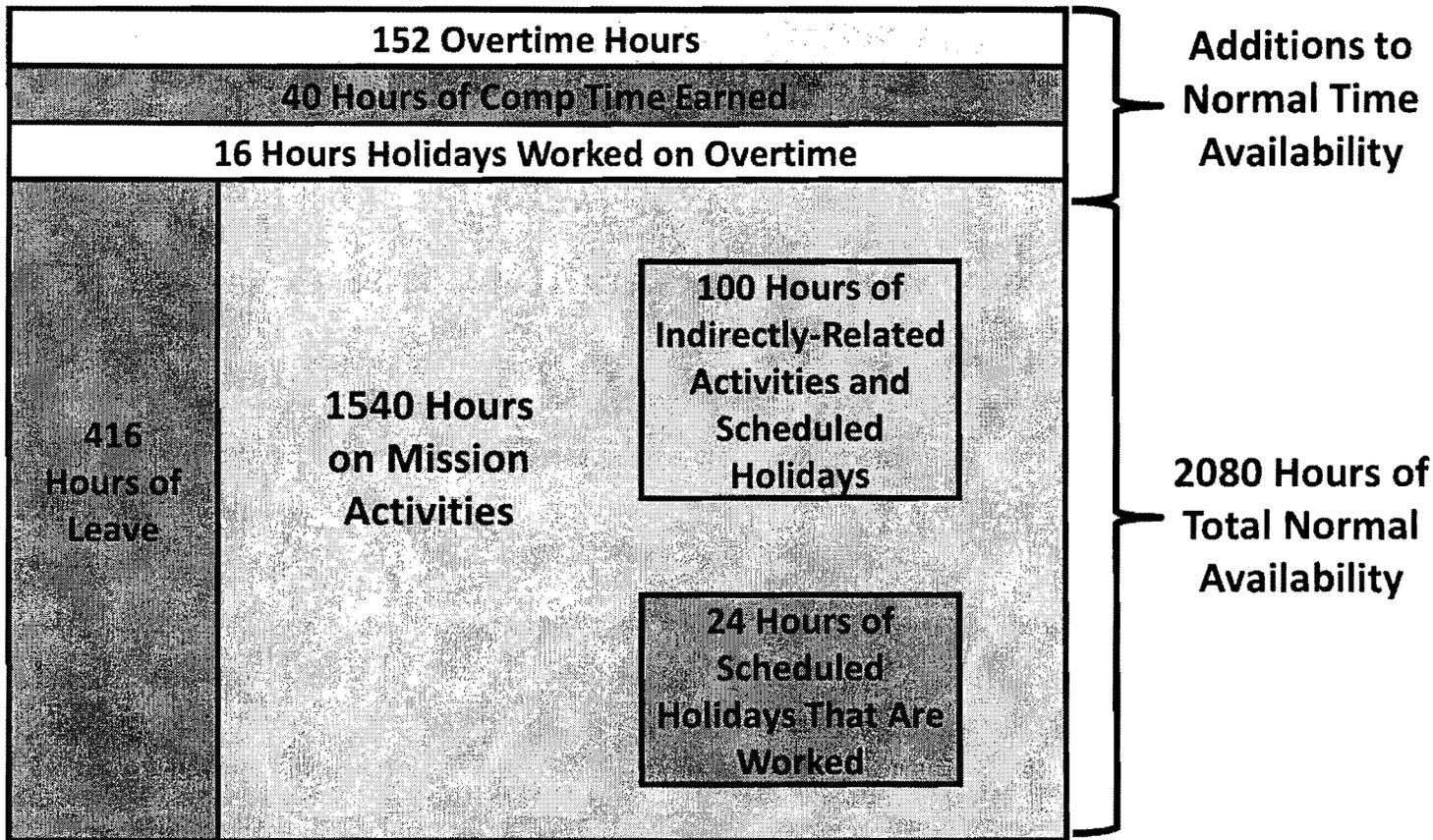
Workforce Availability Overview



 = Time Recorded as REG Time on Timesheets



Calculating Workforce Availability: Person X Example



Net Available Hours = 1540 + 100 + 24 = 1664

Net Available Percent = 1664/2080 = 80%

Total Available Percent = (1664 + 16 + 40 + 152) / 2080 = 90%



Factors That Reduce Availability Absenteeism

Factor	Data Available	Data Unavailable
Annual leave	X	
Sick leave	X	
Personal leave	X	
Paid time off	X	
Compensatory leave used	X	
Administrative leave*	X	
Disability leave	X	
Military leave	X	
Leave without pay	X	
Professional improvement leave	X	
Scheduled holidays		X

* Administrative leave is used to capture a wide range of factors: emergency closures, bereavement, leave pending disciplinary action, leave to attend to administrative duties such as union duties, jury duty, etc. These varying reasons cannot be separated in the data.



Factors That Reduce Availability Indirectly-Related Activities

Factor	Data Available	Data Unavailable
Training (not recorded as professional improvement leave)		X
Mandated breaks		X
Travel		X
Support tasks		X

Indirectly-related activities are currently recorded as “regular” time.



Factors That Increase Availability

Factor	Data Available	Data Unavailable
Overtime	X	
Compensatory leave earned	X	
Work during scheduled holidays	X	



Data Caveats

- **Fire personnel have a different number of hours per year than other employees**
 - Using percentages rather than hours allows Fire personnel to be compared accurately to other personnel
- **Net available hours shown includes time spent on indirectly-related activities and scheduled holidays**
 - Actual availability is lower than what is shown
 - Results shown here will differ from the results of formal net annual work hours studies performed by some departments
- **All data is dependent upon accuracy in timekeeping**



Workforce Availability FY10-Q3: Executive Departments Factors that Reduce Availability

Dept.	Factors that reduce availability - leave						Net Available
	Annual	Sick	Comp	Admin	Disability	Other	
MCPD	6%	4%	2%	4%	0%	1%	83%
HHS	6%	5%	1%	6%	0%	1%	82%
MCFRS	7%	5%	2%	2%	2%	0%	82%
DOT	5%	5%	2%	4%	1%	1%	83%
DOCR	5%	5%	2%	2%	1%	1%	85%
DGS	4%	5%	3%	3%	1%	0%	84%
DLC	4%	4%	1%	5%	0%	0%	85%
LIB	5%	4%	1%	5%	0%	0%	85%
DPS	6%	5%	1%	5%	0%	1%	82%
REC	3%	3%	0%	4%	0%	0%	89%
All dept.	5%	4%	2%	4%	1%	1%	84%

Annual leave includes both annual leave and personal leave. Other leave includes paid time off, military leave, leave without pay, and professional improvement leave.

Note that data shown has been rounded and may therefore not add to 100%.



Workforce Availability FY10-Q3: Executive Departments Factors that Increase Availability

Dept.	Total Potential Hours	Net Available	Factors that increase availability			Total Available
			Overtime	Comp Earned	Holiday	
MCPD	850,811	83%	5%	3%	1%	92%
HHS	804,137	82%	1%	1%	0%	84%
MCFRS	756,195	82%	9%	2%	4%	97%
DOT	647,422	83%	20%	3%	0%	105%
DOCR	278,370	85%	7%	1%	0%	93%
DGS	225,954	84%	10%	3%	0%	97%
DLC	191,373	85%	2%	1%	0%	88%
LIB	187,825	85%	0%	0%	0%	85%
DPS	97,135	82%	4%	1%	0%	86%
REC	91,691	89%	0%	1%	0%	90%
All dept.	4,908,927	84%	6%	2%	1%	92%



Note that data shown has been rounded.

Workforce Availability

(17)

Workforce Availability FY10-Q3: Executive Departments Factors that Reduce Availability

Dept.	Factors that reduce availability - leave						Net Available
	Annual	Sick	Comp	Admin	Disability	Other	
DTS	5%	4%	1%	4%	0%	1%	85%
DEP	6%	5%	2%	5%	0%	1%	83%
FIN	5%	4%	1%	5%	0%	1%	86%
OHR	6%	3%	1%	5%	0%	1%	84%
DHCA	5%	4%	1%	5%	0%	1%	84%
RSC	3%	3%	2%	4%	0%	0%	88%
CAT	5%	4%	1%	5%	0%	0%	86%
CEX	3%	3%	1%	4%	0%	2%	87%
DED	4%	3%	1%	4%	0%	2%	86%
BOE	5%	3%	1%	4%	0%	1%	85%
All dept.	5%	4%	2%	4%	1%	1%	84%

Annual leave includes both annual leave and personal leave. Other leave includes paid time off, military leave, leave without pay, and professional improvement leave.

Note that data shown has been rounded and may therefore not add to 100%.



Workforce Availability FY10-Q3: Executive Departments Factors that Increase Availability

Dept.	Total Potential Hours	Net Available	Factors that increase availability			Total Available
			Overtime	Comp Earned	Holiday	
DTS	79,012	85%	1%	1%	0%	87%
DEP	75,548	83%	3%	1%	0%	86%
FIN	55,350	86%	0%	0%	0%	86%
OHR	40,039	84%	0%	1%	0%	85%
DHCA	39,620	84%	0%	0%	0%	85%
RSC	38,713	88%	3%	1%	0%	93%
CAT	35,683	86%	0%	1%	0%	87%
CEX	25,072	87%	1%	2%	0%	90%
DED	21,885	86%	0%	0%	0%	86%
BOE	19,155	85%	0%	2%	0%	88%
All dept.	4,908,927	84%	6%	2%	1%	92%



Note that data shown has been rounded.

Workforce Availability

Workforce Availability FY10-Q3: Executive Departments Factors that Reduce Availability

Dept.	Factors that reduce availability - leave						Net Available
	Annual	Sick	Comp	Admin	Disability	Other	
OMB	4%	3%	1%	3%	0%	1%	88%
CUPF	5%	4%	0%	5%	0%	0%	85%
OCP	5%	5%	1%	5%	0%	0%	84%
HRC	7%	6%	1%	5%	0%	1%	80%
PIO	4%	2%	1%	3%	0%	1%	89%
OEMHS	3%	5%	0%	2%	0%	1%	88%
CFW	3%	3%	0%	5%	0%	0%	88%
IGR	2%	1%	1%	3%	0%	0%	93%
ECM	2%	3%	0%	5%	0%	0%	90%
All dept.	5%	4%	2%	4%	1%	1%	84%

Annual leave includes both annual leave and personal leave. Other leave includes paid time off, military leave, leave without pay, and professional improvement leave.

Note that data shown has been rounded and may therefore not add to 100%.



77

Workforce Availability FY10-Q3: Executive Departments Factors that Increase Availability

Dept.	Total Potential Hours	Net Available	Factors that increase availability			Total Available
			Overtime	Comp Earned	Holiday	
OMB	16,389	88%	0%	8%	0%	97%
CUPF	11,520	85%	0%	0%	0%	85%
OCP	9,113	84%	0%	0%	0%	85%
HRC	8,619	80%	0%	0%	0%	81%
PIO	6,741	89%	0%	2%	0%	91%
OEMHS	4,608	88%	4%	2%	0%	93%
CFW	4,498	88%	0%	1%	0%	89%
IGR	2,358	93%	0%	13%	0%	106%
ECM	1,536	90%	0%	0%	0%	90%
All dept.	4,908,927	84%	6%	2%	1%	92%



Note that data shown has been rounded.

Workforce Availability

Comparisons of FY10-Q3 Availability to Last Quarter and Last Year

Dept.	FY10-Q3		Last quarter – FY10-Q2				Last year – FY09-Q3			
	Net	Total	Net	Δ	Total	Δ	Net	Δ	Total	Δ
MCPD	83%	92%	84%	-1%	94%	-2%	86%	-3%	96%	-4%
HHS	82%	84%	84%	-1%	85%	-1%	86%	-3%	86%	-3%
MCFRS	82%	97%	81%	1%	103%	-7%	85%	-3%	102%	-5%
DOT	83%	105%	86%	-3%	103%	2%	87%	-4%	97%	8%
DOCR	85%	93%	85%	0%	93%	0%	85%	-1%	93%	-1%
DGS	84%	97%	84%	0%	91%	6%	87%	-3%	95%	2%
DLC	85%	88%	89%	-4%	94%	-6%	89%	-4%	91%	-4%
LIB	85%	85%	85%	0%	85%	0%	90%	-6%	90%	-5%
DPS	82%	86%	84%	-3%	87%	-1%	87%	-5%	89%	-3%
REC	89%	90%	88%	1%	89%	1%	92%	-2%	92%	-2%
All	84%	92%	85%	-1%	93%	-1%	87%	-4%	94%	-2%

Decreases in net availability of more than 2.5% are colored red.
 Increases in net availability of more than 2.5% are colored green.
 Note that data has been rounded.



Comparisons of FY10-Q3 Availability to Last Quarter and Last Year

Dept.	FY10-Q3		Last quarter – FY10-Q2				Last year – FY09-Q3			
	Net	Total	Net	Δ	Total	Δ	Net	Δ	Total	Δ
DTS	85%	87%	86%	-1%	88%	-1%	89%	-4%	91%	-4%
DEP	83%	86%	83%	0%	86%	1%	87%	-4%	90%	-3%
FIN	86%	86%	86%	0%	88%	-1%	90%	-4%	91%	-4%
OHR	84%	85%	86%	-2%	87%	-2%	89%	-5%	90%	-5%
DHCA	84%	85%	85%	-1%	86%	-1%	90%	-5%	90%	-5%
RSC	88%	93%	87%	1%	91%	2%	89%	-2%	94%	-1%
CAT	86%	87%	87%	-1%	88%	-1%	89%	-3%	91%	-4%
CEX	87%	90%	86%	1%	88%	2%	92%	-4%	94%	-4%
DED	86%	86%	86%	0%	86%	0%	91%	-5%	92%	-5%
BOE	85%	88%	86%	-1%	87%	1%	92%	-6%	92%	-5%
All	84%	92%	85%	-1%	93%	-1%	87%	-4%	94%	-2%

Decreases in net availability of more than 2.5% are colored red.
 Increases in net availability of more than 2.5% are colored green.
 Note that data has been rounded.



47

Comparisons of FY10-Q3 Availability to Last Quarter and Last Year

Dept.	FY10-Q3		Last quarter – FY10-Q2				Last year – FY09-Q3			
	Net	Total	Net	Δ	Total	Δ	Net	Δ	Total	Δ
OMB	88%	97%	90%	-2%	91%	5%	92%	-4%	99%	-3%
CUPF	85%	85%	84%	1%	84%	1%	86%	-1%	87%	-1%
OCP	84%	85%	88%	-4%	89%	-4%	89%	-5%	90%	-5%
HRC	80%	81%	82%	-2%	84%	-3%	86%	-5%	87%	-6%
PIO	89%	91%	86%	4%	86%	5%	92%	-3%	93%	-1%
OEMHS	88%	93%	84%	4%	87%	7%	89%	-1%	91%	2%
CFW	88%	89%	89%	0%	89%	0%	89%	-1%	90%	-1%
IGR	93%	106%	82%	11%	84%	22%	96%	-3%	106%	0%
ECM	90%	90%	89%	1%	89%	1%	94%	-4%	94%	-4%
All	84%	92%	85%	-1%	93%	-1%	87%	-4%	94%	-2%

Decreases in net availability of more than 2.5% are colored red.
 Increases in net availability of more than 2.5% are colored green.
 Note that data has been rounded.



Recommendations to Enhance Data

- **Capture scheduled holidays**
 - Steps needed: Create special earning type code within payroll
 - Factors affecting implementation: Scheduled holidays are already coded and captured within MCTime, so for most people this change would be transparent

- **Capture training hours**
 - Steps needed: Create special earning type code(s) within payroll
 - Factors affecting implementation:
 - There is interest both within OHR and within County leadership to track training hours for other purposes
 - Currently, the ability to identify training hours in payroll data is limited
 - Decisions will have to be made about what exactly will be tracked and how
 - Employees will need guidance about how to use the new earning codes consistently



Why Workforce Availability is Important

- **Availability is different than productivity**
 - Productivity is affected by both availability and efficiency
 - These kinds of availability calculations may not be appropriate for some departments or job classes
- **Small changes in availability can have large effects on workload and personnel needs**
 - DOCR has documented the effects of changes in availability on their personnel needs for custody and security of inmates
 - Across all employees, just a 1% increase in availability would add the equivalent of 97.8 positions to the workforce

A 1% increase in availability is only 20.8 hours per person per year.



Effect of Availability on Personnel Needs

- **DOCR has undertaken two net annual work hours studies to determine the number of staff needed for custody and security of inmates**
 - Study accounted for items such as holidays and training
 - Annual hours needed: 452,493
 - FY06 results: average availability was **78%** (1634 of 2086 hours)
 - FY07 results: average availability was **74%** (1546 of 2086 hours)
- **FY10-Q3 workforce availability utilizing the methodology presented here: 85%**

Workforce availability	Number of staff needed
100% (2086 hours)	217
85% (1773 hours)	256
78% (1634 hours)	277
74% (1546 hours)	293

Every percent decrease from 90% to 70% availability adds 3-4 personnel and about \$292,854 - \$390,472 in salary and benefits.



Effect of Increases in Availability

Number of employees with increase in availability	1% increase (20.8 hours/year)		2% increase (41.6 hours/year)	
	# hours gained	# effective positions gained*	# hours gained	# effective positions gained*
500	10,400	5.9	20,800	11.6
1,000	20,800	11.8	41,600	23.3
3,000	62,400	35.3	124,800	69.8
5,000	104,000	58.8	208,000	116.3
All regular, full-time employees (8,314)	172,931	97.8	345,862	193.3

Assuming an average per person cost of \$80,000 per year in salary and benefits, a 1% increase in availability among 3,000 employees would be worth \$2.8 million in avoided personnel costs.



How Availability Can Be Engaged

- **Monitoring of sick leave use and abuse**
- **Reducing disability leave through improving safety and speeding up return to work**
- **Strategically controlling indirectly-related activities**
 - Training: timing of training, in-house vs. out-of-house, etc.
 - Travel: efficiency of routing (where applicable), etc.
 - Meetings
 - Etc.
- **Engaging the topic of employee compensation**
 - For example, 60 hours of comp time for top-of-grade employees
 - 60 hours of additional leave decreases availability by 2.9%
 - 1,022 employees used this kind of comp time so far in FY10
 - Potential hours lost = 61,320 hours = 35.1 positions = \$2.8 million in salary and benefits (at \$80,000 per position)
- **Other**



Are there ways that the effects of position reductions can be mitigated through improving availability?

- **Who should be responsible for engaging availability?**
- **What is the process for deciding whether and how to engage availability?**
- **Who should be involved in that decision?**
- **What best practices exist for engaging workforce availability?**



How should workforce availability be used within the budget process?

- **Several departments already use this kind of information as the basis for personnel complement justifications**
 - DOCR
 - MCFRS
 - DOT: Transit
- **Other areas that may have a workload or caseload that can be calculated**
 - HHS
 - DGS: Fleet and facilities maintenance
 - Police
 - Permitting
 - Liquor control
 - Finance: Treasury operations
- **What is the process for deciding how availability should be used in the budget process?**
- **Who should be involved in deciding?**



What is the standard for workforce availability?

- **Montgomery County has not previously identified a standard**
- **Availability is driven by factors the County can influence**
 - The negotiated agreements and personnel regulations stipulate many of the components that affect availability, particularly leave allowances
 - There are a variety of personnel factors that affect availability
- **What industry standards or best practices exist?**
- **What is the process for defining a standard?**
- **Who should be involved?**



Factors Affecting Net Availability

- **Methodology**

- Examined all payroll hours claimed in FY10 by regular employees that were actively employed on 6/9/2010
- Calculated net availability for all employees
- Made comparisons of the average net availability for various groups of employees

- **General findings**

- Position type affects availability
 - Exempt vs. non-exempt
 - MLS vs. non-MLS
- Longer service time is associated with lower availability
- Bargaining unit affiliation affects availability
- Full-time or part-time status does not affect availability



Factors Affecting Net Availability

- **Exempt vs. non-exempt status**
 - Average net availability of **exempt** employees: 85.2%
 - Average net availability of **non-exempt** employees: 83.3%

- **MLS vs. non-MLS**
 - Average net availability of **MLS** employees: 86.8%
 - Average net availability of **non-MLS** employees: 83.9%

- **Full-time vs. part-time status does not affect availability**
 - Average net availability of **full-time** employees: 84.0%
 - Average net availability of **part-time** employees: 84.1%



Factors Affecting Net Availability

Years of service	0-4	5-9	10-14	15-19	20-24	25+
Average availability	86.2%	83.9%	83.2%	82.5%	82.5%	82.5%

Age range	0 to 24	25 to 34	35 to 44	45 to 54	55 to 64	65+
Average availability	87.5%	84.6%	83.6%	83.9%	84.1%	83.7%

Bargaining Unit	None	IAFF	FOP	MCGEO- OPT	MCGEO- SLT
Average availability	86.8%	81.3%	83.3%	83.7%	83.6%

*Note: All comparisons are made against the overall average availability of 84.0%.
Green shading indicates availability that is statistically significantly higher.
Red shading indicates availability that is statistically significantly lower.*



Wrap-up and Follow-up Items

- Wrap-up



Workforce Availability

32

6/18/2010

CountyStat

MFP Committee Questions on MOA with IAFF

1. For FY11, the Council did not approve pay increases of any type (no general wage adjustments, no service increments, and no increases in any pay differentials). Why does the proposed Memorandum of Agreement restore the increases in the special differentials for CRT, EMT-I and EMT-P which the Council already disapproved?

The restoration of any previously negotiated differential to members of the IAFF in the course of mandatory negotiations under Section 33-153(p) of the Montgomery County Code was the result of a negotiated settlement and was offered within the context of reaching agreement on a total package. The cost of the restoring the above referenced differentials was offset by the elimination of the FROMS Physiology Program.

2. Why does the Executive feel it is urgent to restore these pay differential increases? Are CRTs, EMT-Is, or EMT-Ps leaving County employment? Is it difficult to recruit individuals to become certified at these levels? Do you have any unfilled positions for these certifications? Are there other difficulties in attracting or retaining individuals to fill these positions?

CRTs, EMT-Is and EMT-Ps (ALS providers) are generally not leaving County employment for other higher paying jurisdictions. Rather MCFRS has always strived for a healthy internal recruitment and retention program targeting ALS providers. Unfortunately, this has not always been successful. MCFRS loses ALS providers to promotions or the employee's interest in being an ALS provider abates, with a historical average time of paramedic service about eight to ten years.

In addition, due to the opening of new stations and the expansion of ALS service within existing MCFRS resources, the demand for ALS providers is greater than the supply. Currently, we have 18 vacant medic positions.

Maintaining all current ALS providers and recruiting incumbents to receive the ALS training is a priority for MCFRS.

3. How does the County's compensation for CRTs, EMT-Is, and EMT-Ps compare with compensation for these positions in other neighboring jurisdictions? Is the compensation in other nearby Counties creating an incentive for EMS personnel to move to other jurisdictions for better pay or benefits?

Surrounding jurisdictions pay ALS providers on average anywhere from \$7000 to \$10,000 more than a BLS firefighter. ALS providers

hired after July 1, 2005 are on a pay scale where they receive a base differential of \$3000 and then an hourly differential for time spent on an ALS transport unit. This hourly differential was scheduled to nearly double July 1, 2010 thus bringing the compensation to comparable levels with ALS providers hired prior to July 1, 2005.

Surrounding jurisdictions who have recently advertised for Firefighter/Paramedics:

DC	\$48,731
Fairfax County	\$53,887
Fairfax City	\$48,870 (increases to \$51,674 after ALS internship)
Prince William	\$48,182 (not including hourly riding differential)
Montgomery Co.	\$41,673 (not including hourly riding differential)

4. To what extent are other jurisdictions hiring new personnel at this time?

Other jurisdictions are cautiously hiring. ALS providers are in high demand causing some jurisdictions to offer lucrative signing bonuses (\$7K in DC).

5. What is the current status of the random drug and alcohol testing program in MCFRS?

We currently do not have a random drug testing program in operation.

6. What would be the impact of suspending the program in FY11 and FY12?

Random testing will not occur during these years if the program is suspended. The cost of conducting the program will not be incurred. It is important to note that "suspended" may be read to indicate that there is a random testing program in place and we will stop it. However, MCFRS has never implemented a random testing program.

7. Is a random drug and alcohol testing program required to meet any State or federal requirements regarding safety-sensitive or first responder positions?

No. Firefighters are exempt from the drug testing requirements imposed by the federal Department of Transportation for CDL's. Other testing requirements remain in place.

8. Why must any random drug and alcohol testing program after FY12 be negotiated as part of normal term negotiations? Why not just restart the existing random drug and alcohol testing program?

The need to renegotiate the random alcohol testing was a term of the final agreement. The agreement was negotiated as a total package. The inclusion of this provision was necessary to obtain an agreement between the parties.

9. Please briefly describe the FROMS Physiology Program.

The program was created when the County adopted the Wellness Fitness Initiative, and represents the Fitness portion of the initiative. The Fitness program includes the design and implementation of specific fitness activities and exercises that are used by recruits and incumbents on a daily basis. It also includes supervision of ACE Certified Peer Fitness Trainers (PFTs). The PFTs provide advice and guidance to personnel concerning fitness activities, etc. The Fitness program was also designed to provide all personnel with individualized fitness assessments and prescriptions (in conjunction with medical evaluations at FROMS). The Exercise Physiologist worked in the Fitness Program and was responsible for the development and oversight of the program as well as maintaining the inventory of fitness equipment.

10. What will be the impact of eliminating the program as of August 1?

MCFRS will no longer have the Exercise Physiologist position and will no longer support the PFTs. The immediate impact will be that our fitness and exercise methods will not be updated. MCFRS will continue to require Recruit Firefighter/Rescuers and incumbents to complete fitness activities. Fitness assessments and fitness prescriptions will no longer be performed.

11. What will happen to the filled Exercise Physiologist position if the FROMS Physiology Program is eliminated on August 1?

The position will be eliminated.

Drummer, Bob

From: Adler, Joseph
Sent: Thursday, July 08, 2010 11:24 AM
To: Drummer, Bob
Cc: Lacy, George; Radcliffe, Edward; Milewski, Jeremy
Subject: FW: Questions on MOA with IAFF

Bob
FYI

*Joe Adler
Director, Office of Human Resources
Montgomery County, MD
101 Monroe Street 7th Fl
Rockville, MD 20850
240-777-5100 voice
240-777-5162 fax
joseph.adler@montgomerycountymd.gov*

-----Original Message-----

From: Milewski, Jeremy
Sent: Thursday, July 08, 2010 10:41 AM
To: Adler, Joseph
Cc: Lacy, George
Subject: RE: Questions on MOA with IAFF

Starting salary for a newly hired Paramedic is \$41,613

A paramedic who was hired prior to June 30, 2005 is currently on the following lump sum differential schedule:

0-4 years EMT-P Service	\$5,830/year
5-8 years EMT-P Service	\$6,891/year
8+ years EMT-P Service	\$7,951/year

Increases to this schedule were negotiated to increase to the following:

0-4 years	\$6,080
5-8 years	\$7,391
8+ years	\$8,701

For paramedics hired after July 1, 2005, the following differentials currently apply:

All certified Paramedics receive a \$3,000/year lump sum differential. In addition, these paramedics also receive an hourly differential for all hours they are assigned to a transport unit:

0-4 years certification	\$2.00/hour
5-8 years certification	\$2.50/hour
8+ years certification	\$3.25/hour

Increases to this schedule were negotiated to increase to the following:

0-4 years	\$4.00/hour
5-8 years	\$4.50/hour
8+ years	\$5.25/hour

These hourly differentials are only paid during hours that a paramedic is scheduled to be riding in a transport position. They do not receive the differential during other assignments so the total differential received for paramedics hired after July 1, 2005 varies based upon schedule and assignment.

In regards to the language from the MCVFRA agreement, the reference to the Transportation discount is the

7/8/2010

64

same discount granted to volunteers under section 21-21(g) of the County Code. The language of the agreement grants volunteers the same recreational discounts as career firefighters and places a reference to the transportation discount they already receive into their bargaining agreement. No change was made to the transportation discount

Jeremy Milewski, PHR
Human Resources Specialist
Office of Human Resources
Montgomery County Government
240-777-5017

-----Original Message-----

From: Adler, Joseph
Sent: Wednesday, July 07, 2010 6:33 PM
To: Milewski, Jeremy; Radcliffe, Edward
Cc: Lacy, George; Weisberg, Stuart
Subject: Fw: Questions on MOA with IAFF

Jeremy
Pls compile the information ASAP
Thanks

Resolution No: _____
Introduced: July 20, 2010
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the request of the County Executive

**Subject: Collective Bargaining Agreement with Municipal & County Government
Employees Organization**

Background

1. Section 511 of the County Charter authorizes the County Council to provide by law for collective bargaining, with arbitration or other impasse resolution procedures, with authorized representatives of County Government employees.
2. Chapter 33, Article VII of the County Code implements Section 511 of the Charter and provides for collective bargaining by the County Executive with the certified representatives of County employees and for review of the resulting contract by the County Council.
3. The Executive and UFCW Local 1994, Municipal & County Government Employees Organization, have agreed to amend the existing contract scheduled to expire on June 30, 2011 with the amendments attached to this resolution.
4. On June 25, 2010, the Executive submitted to the Council the terms and conditions of the amendments to the existing collective bargaining agreement that require or may require an appropriation of funds, changes in any County law or regulation, or may have a present or future fiscal impact as an out-of-cycle agreement.
5. The Management and Fiscal Policy Committee is scheduled to consider and make recommendations on these amendments at a worksession on July 26, 2010.
6. The County Council has considered these terms and conditions and is required by law to indicate its intent to approve these amendments.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The County Council intends to approve funding for a one-time award of **26 hours** of compensatory leave to each bargaining unit member on January 1, 2011. This compensatory leave may not be taken when it would require backfilling with overtime and cannot be paid out at any time.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

F:\LAW\TOPICS\Collective Bargaining\10collbar\June 2010 Agreements\MCGEO 7-10 Resolution.DOC

Resolution No: _____
Introduced: July 20, 2010
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the request of the County Executive

Subject: Collective Bargaining Agreement with Fraternal Order of Police

Background

1. Section 510 of the County Charter requires the County Council to provide by law for collective bargaining with binding arbitration with an authorized representative of the County police officers.
2. Chapter 33, Article V of the County Code implements Section 510 of the Charter and provides for collective bargaining with representatives of certain police officers and for review of the resulting agreement by the County Council.
3. The County Executive and the Fraternal Order of Police (FOP) have agreed to enter into a new two-year agreement effective July 1, 2010 through June 30, 2012 incorporating all of the terms of the existing agreement with certain amendments. Those amendments are attached to this Resolution.
4. On June 25, 2010, the County Executive submitted to the County Council the terms and conditions of the collective bargaining agreement that require or may require an appropriation of funds or changes in any County law or regulation as an out-of-cycle agreement.
5. The Management and Fiscal Policy Committee is scheduled to consider the agreement at a worksession on July 26, 2010, and make recommendations at this worksession.
6. The County Council has considered these terms and conditions and is required by law to indicate its intention regarding the appropriation of funds or any legislation or regulations required to implement the agreement.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The County Council intends to approve the following amendments:

1. a one-time award of **26 hours** of compensatory leave to each bargaining unit member on January 1, 2011. This compensatory leave may not be taken when it would require backfilling with overtime and cannot be paid out at any time. In addition, these compensatory leave hours would not count towards the 80-120 hour maximum that can be rolled over from leave year to leave year;
2. a revised tuition assistance program beginning in FY12 with a maximum cost of \$135,000; and
3. legislation to implement an agreement that furlough hours would not result in a loss of retirement benefits.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

F:\LAW\TOPICS\Collective Bargaining\10collbar\June 2010 Agreements\FOP 7-10 Resolution.Doc

Resolution No: _____
Introduced: July 20, 2010
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

Subject: **Collective Bargaining Agreement with Career Fire Fighters Association**

Background

1. Section 510A of the County Charter authorizes the County Council to provide by law for collective bargaining with binding arbitration with authorized representatives of County career fire fighters.
2. Chapter 33, Article X of the County Code implements Section 510A of the Charter and provides for collective bargaining by the County Executive with the certified representatives of the County's fire fighters and for review of the resulting contract by the Council.
3. The Executive and Local 1664, International Association of Fire Fighters, entered into an amendment to the existing agreement effective July 1, 2010 through June 30, 2011. The Memorandum of Agreement is attached to this Resolution.
4. On June 21, 2010, the Executive submitted to the Council the terms and conditions of the out-of-cycle collective bargaining agreement that require or may require an appropriation of funds, changes in County law or regulation, or may have a present or future fiscal impact.
5. The Management and Fiscal Policy Committee is scheduled to consider and make recommendations on the agreement at a worksession scheduled for July 26, 2010.
6. The County Council has considered these terms and conditions and is required by law to indicate its intention to fund or approve any legislation or regulations required to implement the agreement.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

The County Council intends to approve funding for the following amendments:

1. on January 1, 2011, a one-time award of **48 hours** of compensatory leave to each bargaining unit member working a 2496-hour work year and a prorated number of compensatory leave hours for each bargaining unit member working a 42-hour or 40-hour work week. This compensatory leave may not be taken when it would require backfilling with overtime and cannot be paid out at any time;
2. an increase of special pay for CRT, EMT-I and EMT-P pay on July 1, 2010 that was previously rejected by the Council in the FY11 Operating Budget approved on May 27, 2010;
3. a suspension of random alcohol and drug testing for FY11 and FY12; and
4. the elimination of the FROMS Physiology Program effective August 1, 2010, except for the \$100,000 budgeted for equipment. This provision would eliminate one filled Grade 27 exercise physiologist position.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Resolution No.: _____
Introduced: July 20, 2010
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

Subject: **Memorandum of Agreement with Volunteer Fire and Rescue Association (MCVFRA)**

Background

1. County Code Section 21-6 establishes a process for Local Fire and Rescue Departments (LFRD's) to select an authorized representative to represent their interests, and requires the Fire Chief to negotiate in good faith with the authorized representative on certain issues affecting LFRD's and their volunteers.
2. The LFRD's selected the Montgomery County Volunteer Fire and Rescue Association (MCVFRA) to be their authorized representative.
3. On June 25, 2010, the Council received from the County Executive the attached out-of-cycle Memorandum of Agreement between Montgomery County Government and Montgomery County Volunteer Fire and Rescue Association amending the existing agreement for the period from July 1, 2010 through June 30, 2011.
4. Code Section 21-6(p) requires the Executive to submit to the Council any element of an agreement that requires an appropriation of funds, may have a present or future fiscal impact, is inconsistent with any County law or regulation, or requires the enactment or adoption of any County law or regulation. Section 21-6(q) directs the Council to notify the parties within 60 days if it disapproves an agreement in whole or in part. The Council may by resolution extend the time for action.
6. The Management and Fiscal Policy Committee is scheduled to review and make recommendations on the portions of the Memorandum of Agreement requiring funds for FY11 on July 26, 2010.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The County Council approves the following amendments:

1. postpone funding for the previously negotiated increase in the nominal fee, gear bags, turn-out boots, and an MCVFRA vehicle;
2. recognize volunteer participation in the development of policy as provided by County Code Chapter 21; and
3. provide equal discounts on transportation and recreational facilities for active volunteers that the County provides for career fire and rescue employees.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

F:\LAW\TOPICS\Collective Bargaining\MCVFRA\10 VFRA collbar\7-10 approval resolution.doc

GOVT



BD
-CC
SSBF
LL
have via email from BD
have

OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
Acting County Attorney

MEMORANDUM

058107

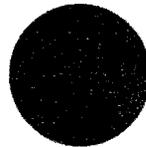
TO: Duchy Trachtenberg, Chair
Management and Fiscal Policy Committee

VIA: Marc P. Hansen MPH
Acting County Attorney

FROM: Edward B. Lattner EBJ
Chief, Division of Human Resources & Appeals

DATE: July 22, 2010

RE: **Council Authority To Review Out-Of-Cycle Collective Bargaining Agreements**



2010 JUL 22 PM 3:18
MONTGOMERY COUNTY ATTORNEY

You have asked about the Council's role in reviewing the out-of-cycle collective bargaining amendments the County Executive recently submitted to the Council in late June. Council's review of a collective bargaining agreement normally consists of two steps: (1) adoption of a resolution indicating the Council's intent to appropriate funds for or otherwise approve the items necessary for the Executive to implement the amendment; and (2) adoption of a legislative act (an appropriation resolution, enactment of a bill, approval of a regulation, etc.) to implement the provision of the agreement. To assist the Council in fulfilling these responsibilities under the collective bargaining law, the Executive must identify for the Council those provisions that require (1) appropriation of funds or (2) a legislative act.

The amendments submitted to the Council in June contain a provision that grants to represented employees leave in addition to the furlough leave required in the Council Resolution approving the FY11 operating budget. Executive branch agencies have concluded that this leave has no fiscal impact because the leave cannot be taken if overtime would be required to cover the absent employee and the leave may not be paid out at any time, including at separation. On the other hand, Council staff concludes that this leave has a fiscal impact, either through the loss of productivity or a build-up of annual leave that may, at some point in time, be converted to cash.

Council legal staff has concluded, therefore, that the Council may, in its resolution of intent, declare its support or disapproval of the compensatory leave provision—despite the fact

that if the Council were to approve the additional leave, we can discern no tangible act the Council would need to take in order to permit the implementation of this provision. We are not aware that granting the leave would be contrary to any appropriation or budget resolution or contrary to any existing law.¹ Therefore, this provision of the agreement may be implemented by the Executive branch without any affirmative act by the Council being necessary.² We disagree with Council legal staff that a resolution of intent, as contemplated in the collective bargaining law, was intended to include a declaration of approval or disapproval regarding the leave provision because such a declaration cannot be linked with a potential affirmative Council action required in order for the Executive to implement the leave provision. Therefore, such a declaration by the Council would have no practical legal impact on the parties' ability to implement the agreement.

We wish to be clear that this advice is predicated on construction of the collective bargaining law and its intent to define the Council's role in the collective bargaining process. This advice does not undermine the Council's authority to set core public policy through legislative acts outside of the collective bargaining laws. As we noted in our previous opinion of May 4, 2009, to Council President Andrews, setting core public policy, such as adopting a budget, imposing taxes, and enacting legislation, must be made by an elected legislative body—i.e., the County Council. Having elected officials make government policy “is essential to the system of representative democracy provided for in Article XI-A of the Maryland Constitution.”³

I. INTRODUCTION

The Council has enacted three sets of collective bargaining laws⁴ and, although there are some slight differences in the statutory language among the three laws, we believe that Council's role in reviewing a collective bargaining agreement is the same under each law.⁵ The Council

¹ Although the budget resolution is a legislative enactment under the teachings of *Haub v. Montgomery County, Maryland*, 353 Md. 448, 727 A.2d 369 (1999), the Council's resolution of intent is not a law because it does not contain the hallmarks of a law (e.g., presented to the Executive for signature, subject to Council veto).

² As a practical matter, we do not understand how one would determine the amount of an appropriation to fund this provision if one were proposed for Council action.

³ *Save our Streets v. Mitchell*, 357 Md. 237, 252 (2000).

⁴ Article V of Chapter 33 governs police (§§ 33-75 to 33-33-85), Article VII of Chapter 33 governs general government employees (§§ 33-101 to 33-112), and Article X of Chapter 33 governs firefighters (§§ 33-147 to 33-157). General government employees actually comprise two separate bargaining units—Service, Labor, and Trades (SLT) and Office, Professional, and Technical (OPT). Most recently, the Council provided collective bargaining for the local fire and rescue departments, which largely mirrors collective bargaining provided to firefighters (§ 21-6).

⁵ This is not to say that all the differences among the collective bargaining laws are insignificant. For (footnote continued on next page . . .)

must review every term in an agreement that it concludes requires legislation or an appropriation of money to implement that term.

Moreover, the Council's review of a collective bargaining agreement is the same regardless of whether the agreement is the result of term bargaining (including a reopener) submitted as part of the Executive's proposed annual operating budget or an out-of-cycle amendment. Therefore, the advice provided by this office in its May 4, 2009, memorandum ("Council's Role in Collective Bargaining—A Primer") to then-Council President Philip Andrews regarding the Council's role in the reviewing an agreement produced during term bargaining applies equally to the Council's role in reviewing an agreement produced during out-of-cycle bargaining.⁶ A copy of that opinion is attached.

II. PROCEDURE FOR COUNCIL REVIEW OF AGREEMENTS

All three collective bargaining laws provide the same timetable for Council action on collective bargaining agreements. The Executive must submit to the Council by April 1⁷ any term in a collective bargaining agreement requiring Council action.⁸ For each such term, the Council must adopt a resolution by May 1 indicating its intent to appropriate funds or enact legislation to implement that term of the agreement. If the Council resolves to reject any part of the agreement submitted for its review, it must designate a representative to meet with the parties (the County Executive and the union) and present its views in the parties' further negotiations.⁹ The parties must attempt to negotiate an agreement acceptable to the Council. The collective bargaining laws do not prohibit the parties from re-negotiating any item, and so the parties are

(... footnote continued from previous page)

example, only the police collective bargaining law requires the County Executive to bargain over the "effect on employees of the employer's exercise of" management rights, § 33-80(a)(7), or provides for single-issue impasse arbitration, § 33-81(c).

⁶ This office noted that the procedures for Council review of an agreement also applied to the Council's review of an out-of-cycle agreement. May 4, 2009, memorandum at 3 n.7.

⁷ The Council, by majority vote taken on or before May 1, may defer the May 1 deadline no later than May 15. In the case of an out-of-cycle amendment, the Council President must set new action deadlines which result, to the extent feasible, is a similar timetable relative to the date the Council received the amendment.

⁸ As a practical matter, the Executive transmits the entire agreement to the Council and attaches a chart identifying those terms the Executive believes require Council review.

⁹ The collective bargaining laws governing firefighters and general governmental employees provide that those further negotiations are "on items that the Council has indicated its intention to reject." The police collective bargaining law does not contain this limiting language. Moreover, § 31(A)(1) of the police collective bargaining agreement provides that if any economic provision of the agreement becomes inoperative for any reason, including Council refusal to fund, then all economic provisions are reopened for negotiation.

not restricted to negotiating only on the item rejected by the Council. Either party may make use of the impasse procedure, and the Council's representative must participate in any impasse procedure in order to state the Council's position. The parties must submit the results of the negotiation or impasse to the Council by May 10.¹⁰

III. CONSTRUCTION OF THE COLLECTIVE BARGAINING LAWS

The cardinal rule of statutory interpretation is to ascertain the intention of the legislature. To determine what that intention is, we look first to the language of the statute because that is the primary source of legislative intent. In construing statutory language, Maryland courts have instructed that we must avoid constructions that are illogical, unreasonable, or inconsistent with common sense. *Mayor & City Council v. Bunting*, 168 Md. App. 134, 141-42, 895 A.2d 1068, 1072 (2006). While there are canons of statutory construction that one can employ to exploit the subtle differences in the description of the Council's role in each of these collective bargaining laws, we believe, as shown below, that myopic focus on those differences would lead to nonsensical results.

An analysis of the language in each of the collective bargaining laws detailing the Council's role in reviewing a collective bargaining agreement is in order. All three collective bargaining laws set out (1) the terms of the agreement that the Executive must "describe" to the Council, (2) the terms of the agreement that the Executive must "submit" to the Council, and (3) the subject of the resolution the Council must adopt indicating its intent to appropriate funds or otherwise implement the agreement.

A. Executive Description Of Agreement To Council

1. Specific Provisions

a. Police

"In each proposed annual operating budget, the County Executive shall describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement." (Emphasis added.)

b. General Government Employee

"In each proposed annual operating budget, the County Executive must describe any

¹⁰ If the Council deferred the May 1 deadline, the May 10 deadline is automatically postponed for an equal number of days.

collective bargaining agreement or amendment to an agreement that is scheduled to take effect **in the next fiscal year** and estimate **the cost of implementing that agreement.**” (Emphasis added.)

c. Fire

“**In each proposed annual operating budget**, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect **in the next fiscal year** and estimate **the cost of implementing that agreement.**” (Emphasis added.)

2. Analysis

With the stylistic substitution of the word “must” for “shall,” all three collective bargaining laws require the Executive, each year, to “describe” for Council review, as part of the **annual proposed operating budget**, any agreement that is scheduled to take effect **in the next fiscal year** and estimate the cost of implementing that agreement **in the next fiscal year**. With regard to a term agreement, the Council must review the agreement if it requires an appropriation of money to implement in the coming fiscal year. With regard to an out-of-cycle amendment, the Council having already adopted the annual operating budget the previous May, the issue is the cost of implementing the amendment during the fiscal year in which the Executive presents the amendment to the Council—the Council must review the amendment if it will require a supplemental appropriation to implement or it is inconsistent with the operating budget resolution (which is a legislative enactment).

This language makes clear that one of the Council’s substantive concerns is determining the cost of implementing an agreement while it is preparing the upcoming budget resolution. (The Council’s other substantive concern is legislative.) The procedure for Council review (discussed at the conclusion of this memorandum) supports this conclusion—all three collective bargaining laws require the Council finalize action on any term collective bargaining agreement before the final budget resolution is adopted.

B. Executive Submission Of Agreement To Council

1. Specific Provisions

a. Police

The County Executive must submit to the Council “any term or condition of a collective bargaining agreement which requires **an appropriation of funds or enactment, repeal or modification of a County law**” (Emphasis added.)

b. General Government Employee

The County Executive must submit to the Council “any term or condition of the collective bargaining agreement that requires **an appropriation of funds, or the enactment or adoption of any County law or regulation, or which has or may have a present or future fiscal impact.**” (Emphasis added.)

c. Fire

The County Executive must “identify” to the Council all terms and conditions in the agreement that “(1) require **an appropriation of funds**, or (2) are **inconsistent with any County law or regulation**, or (3) require the **enactment or adoption of any County law or regulation**, or (4) **which have or may have a present or future fiscal impact.**” (Emphasis added.)

2. Analysis

This is where the three collective bargaining laws differ. With regard to financial review, the police law requires the Executive to submit to the Council for review any term of the agreement that “requires an appropriation of funds.” But the general government employee and fire laws require the County Executive to also submit any term that “**has or may have a present or future fiscal impact.**”

The laws also differ in terms of legislative review. The police law requires the Executive to submit for Council review any term of the agreement that requires “**enactment, repeal or modification of a County law.**” But the general government employee law requires the Executive to submit any term requiring “**the enactment or adoption of any County law or regulation.**” And the fire law builds upon this requirement, directing the Executive to also identify any terms that “**are inconsistent with any County law or regulation.**”

Despite the different language, all three collective bargaining laws require the Executive to submit for Council review those terms of an agreement that the Executive cannot implement absent some affirmative Council action (appropriation of funds or enactment of legislation). We believe that the differences merely reflect the reiteration in different language over time of the roles of the Executive and the Council in submitting and reviewing collective bargaining agreements, without an intent to change the meanings of those provisions.¹¹ A literal reading of

¹¹ As Mr. Drummer notes in the MFP worksession memo, the Council enacted the Police collective bargaining law on April 6, 1982 (Bill 71-81); the Council enacted the general government employee collective bargaining law on June 24, 1986 (Bill 19-86) and the Council enacted the fire and rescue collective bargaining law on July 23, 1996 (Bill 21-96).

the differences among the collective bargaining laws would lead to illogical results. For example, no one could reasonably suggest that the Executive need not submit for Council review a provision in an agreement with the general government employee or fire union that called for repeal of a County law because, unlike the police collective bargaining law, the general government employee and fire collective bargaining laws do not explicitly require the Executive to submit that type of provision to the Council. Similarly, it would be illogical to conclude that the Executive need not submit for Council review a provision in an agreement with the police or general government employee unions that was merely “inconsistent” with a County law or regulation because, unlike the fire collective bargaining law, the police and general government employee collective bargaining laws do not explicitly require the Executive to submit that type of provision to the Council.

Likewise, we believe that the requirement in the general government employee and fire collective bargaining laws that the Executive also submit for Council review any term that “has or may have a present or future fiscal impact” is not meant to give the Council a larger role in authorizing those agreements than the role it has in reviewing a police agreement. We agree with Council staff on this point:

We could not find any legislative history indicating that this difference in the language concerning Council approval of collective bargaining agreements was intended to create a significant distinction in the Council’s authority. The new language added in later collective bargaining laws appears to be intended to convey the same result—the Council retains the ultimate authority over fiscal matters.

July 12, 2010, Drummer MFP worksession memorandum at 3.

We conclude that the Council’s authority over fiscal matters is encapsulated in its appropriation authority. In reviewing a collective bargaining agreement, the Council has two concerns: (1) does the agreement require legislation and (2) does the agreement require an appropriation. Whether an agreement “has or may have a present or future fiscal impact” serves the purpose of alerting the Council to fiscal impacts that may affect future budgets. But any meaningful action by the Council on committing to funding or not funding those items would be both practically and legally premature. The need for an appropriation (like the need for legislation) is a clear test of those items on which the Council must adopt a resolution of intent under the collective bargaining laws. Our conclusion that the necessity for an appropriation is the determinative factor for Council review is supported by the requirement, in all three collective bargaining laws, that the Council’s resolution of intent must indicate whether it will appropriate sufficient funds to implement the agreement.

C. Council Resolution Of Intent To Implement Agreement

1. Specific Provisions

a. Police

The Council “shall indicate by resolution its intention to **appropriate funds for or otherwise implement the agreement** or its intention not to do so, and shall state its reasons for any intent to reject any part of the agreement.” (Emphasis added.)

b. General Government Employee

The Council “must indicate by resolution its intention to **appropriate funds for or otherwise implement the items that require Council review** or its intention not to do so, and must state its reasons for any intent to reject any such item.” (Emphasis added.)

c. Fire

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 must state its reasons for any intention to reject any part of the parties’ final agreement.” (Emphasis added.)

2. Analysis

Here, all three collective bargaining laws agree: the Council must adopt a resolution indicating its intent to appropriate funds for or otherwise implement the agreement.

IV. COUNCIL REVIEW OF THE AGREEMENTS SUBMITTED BY THE EXECUTIVE

The Council can voice its disapproval of the compensatory leave provided for in several of the amendments. But the Executive can still implement that term of the amendments and provide the bargained-for compensatory leave in the current fiscal year, because he can do so without the Council appropriating funds or taking any other affirmative action in the current fiscal year. As previously noted, new are not aware that implementing the compensatory leave provision is contrary to any appropriation or laws.

Finally, we note that the Council’s resolution of intent need not address the appropriation of funds for the FY12 police tuition assistance program. As noted earlier, the collective bargaining laws require the Executive to “describe” for Council review, as part of the annual proposed operating budget, any agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing the agreement in the next fiscal year. Presumably, with regard to an out-of-cycle amendment, the issue is the cost of implementing the amendment

during the fiscal year in which the Executive presents the amendment to the Council. Council staff correctly notes that the Executive will have to seek, and the Council will have to address, the appropriation of money for the police tuition assistance program as part of the FY12 annual operating budget. This does not preclude the Council from adopting a resolution on the matter, but the matter is not "ripe" until the Council considers the FY12 operating budget.

V. CONCLUSION

As we noted in our earlier memorandum, in many respects an agreement reached by the Executive and the union is more in the nature of a proposal or offer submitted for Council review to the extent implementation of that agreement requires actions that are uniquely within the Council's purview. Those actions are the ability to enact legislation (including approval of regulations) and the ability to appropriate funds. Those powers cannot be contracted away by the Executive and the union, nor can they be delegated to an impasse arbitrator. They are critical expressions of core public policy, entrusted only to an elected legislative body.

Enclosure (May 4, 2009 memorandum)

cc: Isiah Leggett, County Executive
Nancy Floreen, President, County Council ✓
Councilmember Valerie Ervin
Councilmember Nancy Navarro
Timothy Firestine, CAO
Joseph Adler, Director, OHR
Steve Farber, Council Staff Director
Robert H. Drummer, Senior Legislative Attorney

ADDENDUM

**COLLECTIVE BARGAINING LAWS ENACTED BY THE COUNTY COUNCIL
(Excerpts Regarding Council Review Of Agreements)**

Police - Section 33-80

(g) Submission to Council. A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties. **In each proposed annual operating budget**, the County Executive shall describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect **in the next fiscal year** and estimate **the cost of implementing that agreement**. Any term or condition of a collective bargaining agreement which **requires an appropriation of funds or enactment, repeal or modification of a County law** shall be timely submitted to the County Council by the employer by April 1, unless extenuating circumstances require a later date. If a later submission is necessary, the employer shall specify the submission date and the reasons for delay to the Council President by April 1. The employer shall make a good faith effort to have such term or condition implemented by Council action. Each submission to the Council shall include:

- (1) all proposed legislation and regulations necessary to implement the collective bargaining agreement;
- (2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and
- (3) all side letters or other extraneous documents that are binding on the parties.

(h) Council review. On or before May 1, the County Council shall indicate by resolution its intention to **appropriate funds for or otherwise implement the agreement** or its intention not to do so, and shall state its reasons for any intent to reject any part of the agreement. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15. If the Council indicates its intention to reject any part, it shall designate a representative to meet with the parties and present the Council's views in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in Section 33-81. The results of the negotiation or impasse procedure shall be submitted to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days.

(i) Adjustments. Any agreement shall provide either for automatic reduction or elimination of conditional wage or benefits adjustments if:

- (1) the Council does not take action necessary to implement the agreement, or
- (2) **sufficient funds are not appropriated for any fiscal year when the**

agreement is in effect.

(j) Later years. The process and timetable in subsection (h) apply to Council review of wage or benefits adjustments after the first year of any multi-year agreement.

(k) Out-of-cycle amendments. The process in subsection (h) applies to Council review of any amendment to a collective bargaining agreement that the Council receives after May 15 of any year, but the deadlines in subsection (h) do not apply. The Council President shall set action deadlines which result, to the extent feasible, in a similar timetable relative to the date the Council received the amendment.

General Government Employees - Section 33-108

(g) **In each proposed annual operating budget**, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect **in the next fiscal year** and estimate **the cost of implementing that agreement**. The employer must submit to the Council by April 1, unless extenuating circumstances require a later date, any term or condition of the collective bargaining agreement that requires **an appropriation of funds, or the enactment or adoption of any County law or regulation, or which has or may have a present or future fiscal impact**. If a later submission is necessary, the employer must specify the submission date and the reasons for delay to the Council President by April 1. The employer must expressly identify to the Council and the certified representative any term or condition that requires Council review. Each submission to the Council must include:

- (1) all proposed legislation and regulations necessary to implement the collective bargaining agreement;
- (2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and
- (3) all side letters or other extraneous documents that are binding on the parties.

The employer must make a good faith effort to have the Council approve all terms of the final agreement that require Council review.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement.

(i) The Council may accept or reject all or part of any term or condition that requires Council review under subsection (g). On or before May 1, the Council must indicate by resolution its intention to **appropriate funds for or otherwise implement the items that require Council review** or its intention not to do so, and must state its reasons for any intent to reject any such item. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15.

(j) If the Council indicates its intention to reject any item that requires Council review, the Council must designate a representative to meet with the parties and present the Council's views in the parties' further negotiation on items that the Council has indicated its

intention to reject. This representative must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this Section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement, or its intention not to do so.

(k) Any agreement must provide for automatic reduction or elimination of wage or benefits adjustments if:

(1) The Council does not take action necessary to implement the agreement or a part of it; or

(2) **Sufficient funds are not appropriated for any fiscal year when the agreement is in effect.**

(l) The Council must take any action required by the public interest with respect to any matter still in dispute between the parties. However, any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate it in the agreement.

(m) Later years. The process and timetable in subsections (i) and (j) apply to Council review of wage or benefits adjustments after the first year of any multi-year agreement.

(n) Out-of-cycle amendments. The process in subsections (i) and (j) applies to Council review of any amendment to a collective bargaining agreement that the Council receives after May 15 of any year, but the deadlines in those subsections do not apply. The Council President must set action deadlines which result, to the extent feasible, in a similar timetable relative to the date the Council received the amendment.

Firefighters - Section 33-153

(l) **In each proposed annual operating budget, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. The annual operating budget must include sufficient funds to pay for the items in the parties' final agreement.** The employer must expressly identify to the Council by April 1, unless extenuating circumstances require a later date, all terms and conditions in the agreement that:

- (1) **require an appropriation of funds, or**
- (2) are inconsistent with any County law or regulation, or
- (3) require the enactment or adoption of any County law or regulation, or
- (4) **which have or may have a present or future fiscal impact.**

If a later submission is necessary, the employer must specify the submission date and the reasons for delay to the Council President by April 1. The employer must make a good

faith effort to have the Council take action to implement all terms and conditions in the parties' final agreement.

(m) Each agreement submitted to the Council must include:

- (1) all proposed legislation and regulations necessary to implement the agreement;
- (2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and
- (3) all side letters or other extraneous documents that are binding on the parties.

(n) The Council may hold a public hearing to enable the parties and the public to testify on the agreement.

(o) The Council may accept or reject all or part of any term or condition in the agreement which:

- (1) **requires an appropriation of funds**, or
- (2) is inconsistent with any County law or regulation, or
- (3) requires the enactment or adoption of any County law or regulation, or
- (4) **which has or may have a present or future fiscal impact.**

On or before May 1, 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 must state its reasons for any intention to reject any part of the parties' final agreement. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15.

(p) If the Council indicates its intention to reject any part of the parties' final agreement, it must select a representative to meet with the parties and present the Council's views in the parties' further negotiation on matters that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so.

(q) Any agreement must provide for automatic reduction or elimination of wage or benefits adjustments if:

- (1) the Council does not take action necessary to implement the agreement or a part of it; or
- (2) **sufficient funds are not appropriated for any fiscal year when the agreement is in effect.**

(r) Later years. The process and timetable in subsections (o) and (p) apply to Council

review of wage or benefits adjustments after the first year or any multi-year agreement.

(s) Out-of-cycle amendments. The process in subsections (o) and (p) applies to Council review of any amendment to a collective bargaining agreement that the Council receives after May 15 of any year, but the deadlines in those subsections do not apply. The Council President must set action deadlines which result, to the extent feasible, in a similar timetable relative to the date the Council received the amendment.

Local Fire and Rescue Departments - Section 21-6

(i) During the course of negotiating, either party may declare an impasse and request the services of the impasse neutral, or the parties may jointly request those services before declaring an impasse. **Except where specified otherwise in this Section, the timetable and process for impasse resolution, including Council review, must follow the timetable and process in Section 33-153.**

* * *

(o) The final offer selected by the impasse neutral, integrated with any items previously agreed on, is the final agreement between the parties, need not be ratified by any party, and has the force and effect of an agreement voluntarily entered into and ratified. The parties must execute that agreement.

(p) The Executive must submit to the County Council for review any element of an impasse neutral's decision that:

- (1) requires an appropriation of funds;
- (2) is inconsistent with any County law or regulation;
- (3) requires the enactment or adoption of any County law or regulation; or
- (4) has or may have a present or future fiscal impact.

(q) The Council must consider any decision or part of a decision referred to it under subsection (p) and notify the parties within 60 days if it disapproves the decision or part. The Council may extend this time by resolution.



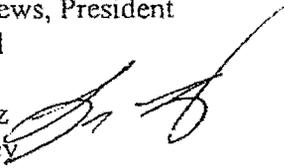
OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

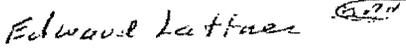
Leon Rodriguez
County Attorney

MEMORANDUM

TO: Philip M. Andrews, President
County Council

VIA: Leon Rodriguez
County Attorney 

FROM: Marc P. Hansen 
Deputy County Attorney

Edward B. Lattner 
Chief, Division of Human Resources & Appeals

DATE: May 4, 2009

RE: Council's Role in Collective Bargaining—A Primer

The Council has asked the Office of County Attorney to prepare a “primer”¹ of the Council’s role in the collective bargaining process. We have understood our task to be to provide a brief overview of the steps in the collective bargaining process that require the Council’s participation. This memorandum is not intended to be an exhaustive analysis of the County’s collective bargaining laws.

The primary sources for describing the Council’s role in the collective bargaining process are the County’s three collective bargaining laws. These three collective bargaining laws were enacted to implement Charter §§ 510, 510A, and 511. These sections authorize the Council to enact legislation providing for collective bargaining with police officers, fire fighters, and general government employees, respectively.² Although the Charter requires legislation with “binding arbitration” only for police officers and fire fighters, all three collective bargaining laws

¹ According to Webster’s *New World Dictionary of the American Language*, a primer is a textbook that gives the first principles of any subject.

² The Council enacted three corresponding sets of collective bargaining laws: Article V of Chapter 33 for police (§§ 33-75 to 33-33-85), Article X of Chapter 33 for fire fighters (§§ 33-147 to 33-157), and Article VII of Chapter 33 for general government employees (§§ 33-101 to 33-112).

provide for binding arbitration between the employees and their employer—the County Executive.

The Council's Role in Collective Bargaining

Step 1: Presentation of collective bargaining agreement for Council approval.

The Council's role in collective bargaining begins after the parties (the executive and the union) submit their final agreement³ for Council action. The collective bargaining laws provide⁴ that, in each annual proposed operating budget, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. By April 1, unless extenuating circumstances require a later date, the County Executive must submit to the Council for review all terms and conditions in any agreement requiring an appropriation of funds or enactment, repeal or modification of a County law.⁵

One could well ask why the Council has any role in the collective bargaining process if the Charter provides for binding arbitration. The reason is that, under the Maryland Constitution, core legislative functions, such as adopting a budget, imposing taxes, and enacting legislation, must be made by an elected legislative body—*i.e.* the County Council. Having elected officials make government policy “is essential to the system of representative democracy provided for in Art. XI-A of the Maryland Constitution.”⁶ *Save Our Streets v. Mitchell*, 357 Md. 237, 252 (2000). So, Step 1 is an unavoidable part of any collective bargaining process.

³ The parties may have reached final agreement through negotiations or it may have been imposed through impasse arbitration.

⁴ The police, fire, and general government collective bargaining laws are substantially similar, but not identical, in so far as the Council's role is concerned.

⁵ The police collective bargaining law requires the County Executive to submit “any term or condition of a collective bargaining agreement which requires an appropriation of funds or enactment, repeal or modification of a County law.” § 33-80(g). The fire collective bargaining law requires the County Executive to submit any term or condition “that requires an appropriation of funds, or are inconsistent with any County law or regulation, or require the enactment or adoption of any County law or regulation, or which have or may have a present or future fiscal impact.” § 33-153(l). Finally, the general governmental employee collective bargaining law requires the County Executive to submit any term or condition “that requires an appropriation of funds, or the enactment or adoption of any County law or regulation, or which has or may have a present or future fiscal impact.” § 33-108(g).

⁶ Montgomery County is a charter home rule county organized under Art. XI-A of the Maryland Constitution.

Step 2: Council indicates whether it intends to fund or otherwise implement the agreement.

By May 1,⁷ the Council must indicate by resolution whether it intends to appropriate funds or otherwise implement the provisions of the agreement requiring Council review, and if not, its reasons for rejecting that part of the agreement. All three collective bargaining laws expressly provide that the Council may accept or reject any "part" of or "item" within an agreement that require an appropriation of funds or legislation.

Step 2 may present two conundrums under certain circumstances:

(A) The Council has the authority to reject a part of an agreement submitted for Council approval—e.g. the Council could decline to fund a provision in an agreement that permits police officers to use personal patrol vehicles outside the County. The union and Executive often will argue that the item being rejected should not be viewed in isolation because it is only one part of a larger agreement. That agreement contains many items some of which may have only been agreed to in exchange for the item being rejected by the Council. This reality of contract formation puts the Council in the difficult position of having to balance the reasons for rejecting the item against the perceived or real inequity this decision may visit on one or both parties to the agreement. Perhaps in mitigation of this, the collective bargaining law provides that the parties may re-negotiate any item in the agreement during the re-negotiation process described in Step 3, below.

(B) The Council's vote at Step 2 is an expression of the Council's intention. This means the vote is not binding. For example, the Council might vote to express an intention to pass legislation authorizing a retirement incentive program. But when the vote on the legislation is actually taken, a majority of the Council may no longer feel a retirement incentive program is in the public interest and the legislation fails to be enacted. This action may come after the timelines designed to allow the parties to engage in further negotiations (see Step 3, below) has passed. Of course, if such a situation were to arise, both parties could agree to go back to negotiations, but it is unclear that one party could force the other to negotiate.

Step 3: Re-negotiation.

If the Council resolves to reject any part of the agreement submitted for its review under Step 2, it must designate a representative to meet with the parties (the County Executive and the

⁷ The Council, by majority vote taken on or before May 1, may defer the May 1 deadline no later than May 15. In addition, all the collective bargaining laws provide that these procedures apply to Council review of wage or benefits adjustments after the first year of any multi-year agreement as well as any out-of-cycle amendments. In the latter instance, the Council President must set new action deadlines for any amendments received after May 15.

union) and present its views in the parties' further negotiations.⁸ The parties must attempt to negotiate an agreement acceptable to the Council. The collective bargaining laws do not prohibit the parties from re-negotiating any item, and so the parties are not restricted to negotiating only on the item rejected by the Council. Either party may make use of the impasse procedure, and the Council's representative must participate in any impasse procedure in order to state the Council's position. The parties must submit the results of the negotiation or impasse to the Council by May 10.⁹

The Fire and general government employee collective bargaining laws provide that the Council must again indicate by resolution whether it intends to appropriate funds for or otherwise implement the agreement as renegotiated by the parties. This language is absent from the police collective bargaining law. Although this language is absent from the police collective bargaining law, § 31(A)(3) of the police collective bargaining agreement suggests that the Council would be asked to consider the parties' renegotiated agreement.

The Council may accept or reject any re-negotiated item in the agreement to the extent that the item requires an appropriation or legislation to implement.¹⁰

Step 4: The aftermath.

All the collective bargaining laws state that every collective bargaining agreement must provide either for automatic reduction or elimination of wage or benefits adjustments if the Council fails to take action necessary to implement the agreement or fails to appropriate sufficient funds for any fiscal year when the agreement is effective.¹¹

Conclusion

The role assigned to the Council in the collective bargaining process is, in many key

⁸ The collective bargaining laws governing fire fighters and general governmental employees provide that those further negotiations are "on items that the Council has indicated its intention to reject." The police collective bargaining law does not contain this limiting language. Moreover, § 31(A)(1) of the police collective bargaining agreement provides that if any economic provision of the agreement becomes inoperative for any reason, including Council refusal to fund, then all economic provisions are reopened for negotiation.

⁹ If the Council deferred the May 1 deadline, the May 10 deadline is automatically postponed for an equal number of days.

¹⁰ Although the collective bargaining laws are silent on this point, we do not believe that Council rejection of an item at this stage would trigger another round of re-negotiations. To construe the collective bargaining laws otherwise would lead to a potentially endless cycle of negotiations.

¹¹ Interestingly, the collective bargaining law applicable to general government employees also states the following: "The Council must take any action required by the public interest with respect to any matter still in dispute between the parties. However, any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate it in the agreement." § 33-108(l). Nevertheless, the Council action will generally remain binding on all parties as a matter of law.

Philip M. Andrews
May 4, 2009
Page 5

respects, at odds with collective bargaining as it is practiced in the private sector. Private employers have different goals and are responsible to a different constituency than a public employer. The County, as the employer, must exercise many core functions (appropriation of funds and enactment of legislation) through an elected legislative body.¹² Neither an arbitrator nor the Executive and union by agreement can set core public policy. Thus, in many respects the agreement reached by the Executive and union (either through consent of the parties or by way of arbitration) is not a true agreement—it is more in the nature of a proposal or offer which must be accepted by the Council.

We hope the Council will find this primer helpful. If we can provide further assistance in this matter, please let us know.

Cc: Joe Adler, Director, Office of Human Resources
Kathleen Boucher, Assistant Chief Administrative Officer
Mike Faden, Senior Legislative Attorney
Bob Drummer, Senior Legislative Attorney
David Stevenson, Associate County Attorney
William Snoddy, Associate County Attorney
Bernadette Lamson, Associate County Attorney
Anne Windle, Associate County Attorney
Amy Moskowitz, Associate County Attorney
Chris Hinrichs, Associate County Attorney

Mph/ebl
A09-00708
M:\Cyc\com\Wpdocs\1028\005\00085149.DOC

¹² See Elkouri & Elkouri, *How Arbitration Works* (6th ed. 2003) 1306. Not surprisingly, Elkouri, long regarded the “bible” for labor relations, devotes a separate chapter to arbitration in the public sector.

Drummer, Bob

From: Adler, Joseph
Sent: Friday, July 23, 2010 1:30 PM
To: Drummer, Bob
Cc: Cook, Sarah; Lacy, George; Boucher, Kathleen; Miller, Sally; Miller, Dorothy; Lacefield, Patrick
Subject: FW: MFP Questions for drug testing--priority
Importance: High

Bob

As per your request. Only Commercial Drivers License holders and undercover police officers are randomly drug tested by Montgomery County Government. Please contact Sarah Cook 7/5064 for any follow up dealing with labor issues, or Dorothy Miller, Manager of OMS for any medical protocol questions.

*Joe Adler
 Director, Office of Human Resources
 Montgomery County, MD
 101 Monroe Street 7th Fl
 Rockville, MD 20850
 240-777-5100 voice
 240-777-5162 fax
 joseph.adler@montgomerycountymd.gov*

- 1) Have we received federal funding through a grant or contract that requires random drug testing; this language is typically written in the terms and conditions as required through federal Drug-Free Workplace regulations? **We receive funding through Federal DOT (Department of Transportation) from FTA (Federal Transit Administration) and FMCSA (Federal Motor Carrier Safety Administration) for DOT related drug testing. There is no funding for Fire/Rescue.**
- 2) Have we specifically received either state or federal funding to do random drug testing in the workplace? When have we applied for such funding if at all? **Currently, funding is received only from DOT for employees whose jobs require a CDL (Commercial Drivers' License). Maryland does not require Fire Rescue to have a CDL.**
- 3) If so, when were we required to accomplish this by? If we haven't implemented such testing although we've received funding, why not? **N/A**
- 4) What exactly has been agreed to in terms of required drug testing, random or not with ALL three unions: MCGEO, IAFF, and FOP? **AP 4-11 (Employee Drug/Alcohol Abuse) refers to the Drug Free Workplace Act as does Section 32 of the Personnel Regulations. The MCGEO CBA references AP 4-11 for OPT and SLT employees subject to drug/alcohol testing. Substance abuse testing for FOP members is regulated by Appendix A of the FOP contract. During negotiations with the IAFF for contract years FY 09-11, the parties agreed, by sideletter, to amend the current MCFRS drug/alcohol testing policy to include random drug testing. Agreement on the procedure of random testing for firefighters is pending a ULP settlement.**
- 5) What kind of education has been provided to management on Drug-Free Workplace best practices? Is any training offered? **OMS offers training through OHR's Training Program – Substance Abuse in the Workplace – that provides information on regulation compliance, testing types and requirements, what drugs are tested, recognizing when post accident or reasonable suspicion testing is necessary, and what to do with a positive test and necessary follow up. There are two classes a year offered for general knowledge and two classes a year for DOT specific regulations. MCFRS also offered a Substance Abuse – in service (2008-2010) that they will continue to offer and possibly provide**

7/23/2010

93

online.

6) What options are available to employees and management should there be drug use/abuse situation? Specifically, what is the standard response if management experiences a difficulty with an employee who has apparent drug use/abuse issues? Are ALL three unions handling this kind of employee situation in the same manner? Or does it vary in terms of what has been specifically bargained or agreed to? If so, how? OMS and EAP act as resources for supervisors and employees facing substance abuses issues. OMS conduct all drug and alcohol testing for the three unions using the same procedures as those established, and approved, by DOT. Although there are a few differences between the DOT policy and the County's policy - specimen collection, handling, transport to the testing lab, review by the Medical Review Officer, and communication of results are all the same. Differences include that 2 supervisors must approve a 'For Cause' test while DOT only requires 1 for the same test type, referred to by them as 'Reasonable Suspicion' and the DOT urine drug screen tests for only 5 drugs while the County panel is for 10 drugs.

In most cases, when an employee receives positive drug/alcohol test results, the employee is sent to EAP with a referral for substance abuse counseling. First offense employees typically receive a last chance agreement to include unannounced drug testing for up to five years. Employees receive EAP approval to return to the workplace.

-----Original Message-----

From: Drummer, Bob
Sent: Thursday, July 22, 2010 12:03 PM
To: Adler, Joseph
Cc: Boucher, Kathleen; Bowers, Richard (FRS)
Subject: MFP Questions for drug testing

Joe,

Duchy asked me to send you the following questions about our need for drug testing of fire employees.

- 1) Have we received federal funding through a grant or contract that requires random drug testing; this language is typically written in the terms and conditions as required through federal Drug-Free Workplace regulations?
- 2) Have we specifically received either state or federal funding to do random drug testing in the workplace? When have we applied for such funding if at all?
- 3) If so, when were we required to accomplish this by? If we haven't implemented such testing although we've received funding, why not?
- 4) What exactly has been agreed to in terms of required drug testing, random or not with ALL three unions: MCGEO, IAFF, and FOP?
- 5) What kind of education has been provided to management on Drug-Free Workplace best practices? Is any training offered?
- 6) What options are available to employees and management should there be drug use/abuse situation? Specifically, what is the standard response if management experiences a difficulty with an employee who has apparent drug use/abuse issues? Are ALL three unions handling this kind of employee situation in the same manner? Or does it vary in terms of what has been specifically bargained or agreed to? If so, how?

I apologize for the late request, but MFP is reviewing the labor agreements on Monday morning.

*Robert H. Drummer
Senior Legislative Attorney
Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850
240-777-7895*

7/23/2010

94

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Amendments to County government collective bargaining agreements

MFP Committee Worksession

The Management and Fiscal Policy Committee worksession scheduled for July 26, 2010 was cancelled due to the severe storm and resulting widespread power failure throughout the County.

Compensatory Leave

The Council received a supplemental memorandum from the County Executive in support of the 3 collective bargaining agreements with the FOP, IAFF, and MCGEO on July 26, 2010. The Executive provided additional arguments in support of the award of compensatory leave in all 3 agreements, the tuition assistance provision in the FOP agreement, and the suspension of the random drug testing in the IAFF agreement.¹ A copy of this memorandum is at ©1-6. The Executive's memorandum contains several additional arguments in support of his conclusion that the award the equivalent of 117 work years of compensatory leave to all County employees has no fiscal impact on the County. The response to this argument from the Office of Legislative Oversight is at ©7- 9.

Random Drug and Alcohol Testing

The supplemental memorandum from the Executive points out that the "staff packet does not mention that the IAFF previously agreed to such testing in exchange for other provisions you (the Council) rejected." This statement is correct. However, the memorandum from the Executive submitting the most recent agreement with the IAFF did not explain the rationale behind the agreement to suspend random drug and alcohol testing. The only explanation for this agreement was located in the OMB fiscal impact statement. The fiscal impact statement concludes that the suspension of the random drug and alcohol testing would save the County \$34,280 in FY11, which would be used to partially offset the cost of the additional special pay for ALS providers.

¹ The Executive memorandum ignores the agreement with the IAFF to increase special pay for ALS providers and to eliminate the FROMS program exercise physiologist position.

The supplemental memorandum further argues that the IAFF would not agree to the random drug and alcohol testing provision that it had agreed to previously since the Council had rejected certain unspecified provisions last May. However, County Code §33-153(p) only permits the parties to renegotiate “matters that the Council has indicated its intention to reject.” Therefore, the previously agreed to provision for random drug and alcohol testing was outside the limited scope of the “further negotiations” authorized by the Council’s rejection of pay increases last May under §33-153(p).

Alternative Proposed Resolutions

The Council introduced proposed resolutions approving the 3 collective bargaining agreements on July 20, 2010 at the request of the County Executive. Since the July 26 MFP Committee worksession was cancelled, Council staff has attached 3 proposed resolutions for Council consideration tracking the recommendations of Council staff. The alternative proposed resolution for the FOP is at ©10-11, for the IAFF at ©12-13, and for MCGEO at ©14-15. Each of these proposed resolutions contains an amendment to Council Resolution No. 16-1373 Approving the FY11 Operating Budget for the County Government that would clarify the Council’s intent to prohibit the award of the additional compensatory leave in these recent out-of-cycle agreements in response to the County Attorney’s Opinion dated July 22, 2010.

<u>This packet contains:</u>	<u>Circle #</u>
Executive’s Supplemental Memorandum	1
OLO Response	7
Proposed FOP alternative resolution	10
Proposed IAFF alternative resolution	12
Proposed MCGEO alternative resolution	14



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

July 23, 2010

TO: Nancy Floreen, President, County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Collective Bargaining Agreements

This memorandum is intended to convey my continuing and strong support for the Memorandum of Agreements (MOA) with the Montgomery County Career Fire Fighters Association (IAFF); Municipal and County Government Employees Organization (MCGEO); and the Fraternal Order of Police (FOP) which the Council will consider and act on in the coming week and which affect all County employees.

The County continues to face difficult fiscal challenges. Over the past four years, I have worked with the Council and with County employees to make the difficult choices to reduce the size of the County budget, which have included significant sacrifices by County employees, in order to produce a more sustainable budget.

In negotiating these agreements, I considered both the significant and painful sacrifices and concessions made by County employees in both the FY10 and FY11 budgets as well as our need to work closely with our County employees in the coming years as we continue to meet our fiscal challenges and provide critical community services during these difficult economic times.

Several issues have been raised about these MOAs, which should be addressed so that the Council has an accurate understanding of the context and impact of these agreements.

1. Compensatory Leave: As stated in the Office of Management and Budget's (OMB) fiscal impact statement, the compensatory leave improvements contained in these agreements do not have a fiscal impact because they do not require any additional appropriation and the leave can not be taken if it would result in backfill with overtime, and the leave can not be paid out in any fiscal year.

I very strongly disagree with the Office of Legislative Oversight's (OLO) description of the fiscal impact of these agreements. OLO maintains in its estimate that compensatory leave will result in additional costs to the County Government in two ways: 1) compensatory leave is taken as an alternative to using annual leave and results in higher leave balances that would be available for cash out at the end of an

Nancy Floreen, President, County Council
July 23, 2010
Page 2

employment with the County; and 2) the award of compensatory leave induces an employee to increase the amount of time away from work.

The OLO analysis neglected to mention that maximum caps exist for annual leave for all County employees which limit the amount of carryover and subsequent leave payouts (see attached chart).¹

The OLO estimate is misleading in that it implies that the subject agreements will result in \$7 million in additional unbudgeted costs for the County Government. This is absolutely not the case.

Even the OLO analysis itself admits that the time away from work as a result of the compensatory leave **“does not affect the amount of public dollars expended.”**

Further, the OLO analysis is inconsistent with its earlier analysis of the impact attributed to the furlough leave imposed on all County Government employees. In the case of furlough leave, the only fiscal impact identified by both OLO and OMB was the reduction in pay and benefits (Social Security contribution) to County employees. While unpaid, furlough leave would have the same purported impact as the additional compensatory leave in that it could result in employees carrying a higher annual leave balance available for cash out at the end of his/her employment.

In addition, the furloughs increase the amount of time away from work, yet such a fiscal impact was not quantified by OLO in its review of either the Executive's or the Council's furlough plans.²

The fact is that neither furlough leave nor compensatory leave have the “fiscal impact” described in the OLO analysis. Given the conditions placed on furlough leave in Council Resolution 16-1373 and in the subject MOA's on the additional compensatory leave, neither requires an additional appropriation or the additional expenditure of public funds.

As per the opinion of the County Attorney, this provision requires neither an appropriation nor a legislative change by the County Council. I am sharing it with you as “information only” – as per Council directives from our late good friend Marilyn Praisner, who wanted the Council to see all parts of an agreement, not just those that required approval.

Further, the Council staff recommendation on the compensatory leave provision fails to consider that this benefit was exchanged as part of the give and take of the collective bargaining process. I can not simply reject the Union's proposals as the Council is in the position to do so, but rather I must negotiate in good faith with our employee representatives and take into consideration the significant concessions they have already made in developing the FY11 budget.

The staff analysis unfortunately leaves out that arithmetic.

Let's take a good look at the concessions I negotiated and the Council supported and the other changes to the pay and benefits that we have jointly supported to help get this County through these difficult fiscal times.

¹ As the attached chart indicates, the cap provisions vary depending on date of hire and hours worked per year, but generally the maximum leave carryover per year is 240 hours for most employees. The average annual leave balance for County employees is 173.4 hours.

² OLO conceded that time away from work “does not affect the amount of public dollars expended...” but only “...represents a measurable reduction in service received for government expenditures.”

Nancy Floreen, President, County Council
July 23, 2010
Page 3

These County Government savings totaled \$28.8 million in FY10 and \$32.6 million in FY11 when you take into account the elimination of COLAs, steps and increments, tuition assistance, as well as furloughs for all County Government employees, and the elimination of the calculation of imputed compensation from retirement benefits. These concessions and other savings represent substantive, real, continuing savings that address the County's immediate and long-term fiscal needs.

The granting of additional leave is a reasonable and modest concession in light of the sacrifice and concessions made by County employees. In the Council's initial rejection of provisions in these contracts, you made it clear you wanted nothing that would require additional appropriations. This does not.

2. Tuition Assistance: The MOA with the FOP included a provision for \$135,000 for tuition assistance in FY12. As the Council staff packet notes, capping the program at \$135,000 produces significant savings over previous FOP tuition expenditures which were approximately \$450,000 and at the same time preserves a valuable career development program for the County's police officers. You will recall that previous contracts permitted FOP members alone to continue to receive tuition assistance, even after the appropriated amount was expended, up to a maximum of \$1,730 for each police officer. As you know, we have not funded any part of the Tuition Assistance program in FY11.

I would also note that this item remains subject to the appropriation process and Council can defer this issue as part of the FY12 budget approval process.

3. Random Drug and Alcohol Testing: Except for those with commercial drivers' licenses and undercover police officers, there is currently no random drug testing of County employees, including fire fighters.

The staff packet does not mention that the IAFF previously agreed to such testing in exchange for other provisions you rejected. Since those provisions were not approved, the IAFF would not agree to include the provision in the renegotiated agreement.

In closing, I believe supporting these agreements is the right thing to do – especially in light of the millions of dollars in economic concessions made by our employees in the FY11 budget and especially to sustain employee morale in these difficult times.

Leadership means looking beyond the short-term to the medium and long-term. As we work to continue to put our fiscal house in better order and to restructure and make more effective our County government, we are going to need to work with our County employees – whether represented or unrepresented -- as partners.

We are not out of the "fiscal difficulties" woods yet – not by a long shot – and we may need to engage our employees in further sacrifices and changes in the coming years.

Rejection of these MOAs will send a very negative message to our employees during these very stressful and difficult economic times – times in which they are already doing more with less. I urge the Council to approve these agreements.

IL:cs

Attachment

Annual/Comp/Sick Leave Accrual and Roll-Over

MCGEO

- Annual Leave
 - Accrues at 120 hours/year for employees with less than 3 years of service, 160 hours/year for employees with 3-15 years of service, 208 hours/year for employees with more than 15 years of service.
 - Employees hired before 12/31/56 may accumulate a maximum of 560 hours, employees hired between 1/1/57 and 7/1/72 may accumulate up to 320 hours, employees hired after 7/1/72 may accumulate a maximum of 240 hours. At the end of the calendar year, any annual leave in excess of these maximums is converted to sick leave. Subject to budget limitation up to 50% of the excess hours may be paid out instead of rolling to sick leave.
- Sick Leave
 - Employees accumulate sick leave at 120 hours/year.
 - There is no maximum to the amount of sick leave that can be accrued.
- Comp Leave
 - Comp leave balances of up to 80 hours can be rolled over from year to year. Any balance over 80 hours is to be paid out at the end of the year or rolled over for one year at the employee's option.

FOP

- Annual Leave
 - Accrues at 120 hours/year for employees with less than 3 years of service, 160 hours/year for employees with 3-15 years of service, 208 hours/year for employees with more than 15 years of service.
 - Employees hired before 12/31/56 may accumulate a maximum of 560 hours, employees hired between 1/1/57 and 7/1/72 may accumulate up to 320 hours, employees hired after 7/1/72 may accumulate a maximum of 240 hours. At the end of the calendar year, any annual leave in excess of these maximums is converted to sick leave. Subject to budget limitation up to 50% of the excess hours may be paid out instead of rolling to sick leave.
- Sick Leave
 - Employees accumulate sick leave at 120 hours/year.
 - There is no maximum to the amount of sick leave that can be accrued.
- Comp Leave
 - Comp leave balances of up to 120 hours can be rolled over from year to year. Any balance over 120 hours is to be paid out at the end of the year or rolled over for one year at the employee's option..

IAFF

- Annual Leave
 - Bargaining unit employees with less than 3 years of County service earn annual leave at the rate of 120 hours per leave year. Full-time employees

with at least a minimum of 3 years, but less than 15 years of County service earn annual leave at the rate of 160 hours per leave year. Full-time employees with 15 years or more of County service earn annual leave at the rate of 208 hours per leave year. Bargaining unit employees assigned to a 2,496-hour work year earn annual leave at the following rates: Less than 3 years County service - 144 hours per leave year; with at least a minimum of 3 years but less than 15 years of County service - 192 hours per leave year; with 15 years or more of County service - 249 hours per leave year. Further, Bargaining unit employees assigned to a 2,184-hour work year earn annual leave at the following rates: less than 3 years County service - 126 hours per leave year; with 3 years but less than 15 years of County service - 168 hours per leave year; with 15 years or more of County service - 219 hours.

- An employee who began work on or before December 31, 1956, may accumulate annual leave up to a maximum of 560 hours, provided the employee has been continuously employed since that date. An employee assigned to a 2,496 or 2,184-hour year and who meets this condition may accumulate annual leave up to a maximum of 672 or 588 hours respectively. An employee who began work on or before December 31, 1956, who subsequently has used accumulated annual leave in excess of 320 hours for the purposes of purchasing retirement service credits may only accumulate annual leave up to a maximum of 320 hours. Bargaining unit employees assigned to a 2,496 or 2,184-hour work year and who meets this condition may accumulate annual leave up to 384 or 336 hours respectively. An employee hired on or after January 1, 1957, but prior to July 1, 1972, may accumulate annual leave up to a maximum of 320 hours. A bargaining unit employee assigned to a 2,496 or 2,184-hour work year and who meet this condition may accumulate annual leave up to 384 or 336 hours, respectively. An employee hired on or after July 1, 1972, may accumulate annual leave up to a maximum of 240 hours. A bargaining unit employee assigned to a 2,496 or 2,184-hour work year and who meets this condition may accumulate annual leave up to 288 or 252 hours, respectively.

- Sick Leave

- Bargaining unit employees assigned to a 2,496-hour work year earn 144 hours of sick leave per year. Bargaining unit employees assigned to a 2,184-hour work year earn 126 hours of sick leave per year. Notwithstanding the accrual rate provided for above, employees in the bargaining unit who work a schedule of 2,080 hours in the work year earn 120 hours of sick leave per year.
- There is no maximum to the amount of sick leave that can be accrued.

- Comp Leave

- A bargaining unit employee who has a compensatory time balance in excess of 80 hours at the end of the leave year (96 hours for an employee assigned to a 2496-hour work year) may elect to be paid for the excess hours by the first pay period following March 15 of the succeeding year or

to carry them over for one year. The carry-over of excess compensatory time must be reduced by no later than December 31 of the succeeding leave year.

Personnel Regulations

- Annual Leave
 - Accrues at 120 hours/year for employees with less than 3 years of service, 160 hours/year for employees with 3-15 years of service, 208 hours/year for employees with more than 15 years of service.
 - Employees hired before 12/31/56 may accumulate a maximum of 560 hours, employees hired between 1/1/57 and 7/1/72 may accumulate up to 320 hours, employees hired after 7/1/72 may accumulate a maximum of 240 hours. MLS can carryover 320 hours, former State/County employees may carry a maximum of 400 hours. At the end of the calendar year, any annual leave in excess of these maximums is converted to sick leave. Subject to budget limitation up to 50% of the excess hours may be paid out instead of rolling to sick leave.
- Sick Leave
 - Employees accumulate sick leave at 120 hours/year.
 - There is no maximum to the amount of sick leave that can be accrued.
- Comp Leave
 - Comp leave balances of up to 80 hours can be rolled over from year to year. For exempt employees any balance over 80 hours is to default to sick leave at the end of the year or be rolled over for one year at the employee's option. For non-exempt employees any balance over 80 hours is to be paid out at the end of the year or rolled over for one year at the employee's option.

MEMORANDUM

July 26, 2010

TO: Robert Drummer, Senior Legislative Attorney

FROM: Aron Trombka,^{AT} Senior Legislative Analyst
Office of Legislative Oversight

SUBJECT: Fiscal Impact of Compensatory Leave Awards

As you requested, this memo briefly responds to the County Executive's July 23 memo to the Council President on collective bargaining agreements. Specifically, this memo addresses the Executive's comments regarding the fiscal impact of awarding compensatory leave.

Introduction: Compensatory time is paid time off. Presumably, an employer awards paid time off with the expectation that the employee will, in fact, use the leave. Services delivered by employees during their work time have value; therefore, the reduction of hours worked (without a corresponding reduction in pay) represents a loss in value for County taxpayer dollars. Measured in dollars, the compensatory time awards proposed by the Executive reduce the value of services provided by County Government employees by about \$7 million (as detailed in my July 7 memo).

Below, I reprint four comments from the Executive's memo followed by my response.

1. CE Comment: *"The compensatory leave improvements contained in these agreements do not have fiscal impact because they do not require any additional appropriation and the leave can not be taken if it would result in backfill with overtime, and the leave can not be paid out in any fiscal year."*

Response – Appropriation: By stating the leave awards do not have a fiscal impact because they do not require any additional appropriation, the Executive adopts an unreasonably narrow interpretation of the term "fiscal impact." Indeed, in other contexts, the County Government considers paid time off to have a fiscal impact despite the absence of an appropriation.

- The County's Comprehensive Annual Financial Report (CAFR) identifies unused annual and compensatory leave as long-term liabilities that reduce overall net government assets. In other words, the award of leave creates a future liability against the County fund balance, similar to issuing long-term debt. This liability exists independent of whether an appropriation is needed to award the leave.

- As mentioned in my previous memo on this topic, a June 18, 2010 CountyStat presentation identified compensatory leave as one of the factors that affects worker availability. To demonstrate the fiscal impact of worker unavailability, the CountyStat presentation estimated the cost of 60 hours of compensatory leave provided to top-of-grade employees in FY10 at \$2.8 million. Once again, a fiscal impact exists even in the absence of an appropriation.

As illustrated in the above two examples, the need for an appropriation is not the sole determining factor of fiscal impact. As described in the introduction to this memo, the award of compensatory has a clear fiscal impact – the reduction in service to the public – with or without the requirement for a change in appropriation.

Response – Overtime: The memoranda of agreement prohibit the use of the additional compensatory leave when such use would necessitate overtime to backfill the missed work hours. This provision mitigates, but does not eliminate, the fiscal impact of the compensatory leave award.

Response – Leave Payout: County Government employees receive a lump sum cash payout for unused annual leave upon separation. The memoranda of agreement exclude the additional compensatory leave from the payout provision. This provision will only affect employees who do not use any annual leave from the proposed date (for award of the compensatory leave January 1, 2011) until termination of their County employment. All other employees certainly will use their additional compensatory leave as a substitute for annual leave. As a result, with the award of additional compensatory leave, employees will either retain additional annual leave (which is eligible for a payout) or will take more paid time off (which results in reduced service to the public for the same cost).

2. *CE Comment:* “The OLO estimate is misleading in that it implies that the subject agreements will result in \$7 million in additional unbudgeted costs for the County Government.”

Response: As stated in the introduction, \$7 million represents the total approximate value of the compensatory time awards in the memoranda of agreement. My previous memo never characterized this estimate as an “unbudgeted cost.” Instead, the \$7 million is the value of the public service forgone as a result of the additional leave without any corresponding budgetary reduction.

3. *CE Comment:* “The OLO analysis neglected to mention that maximum caps exist for annual leave for all County employees which limit the amount of carryover and subsequent leave payouts.”

Response: The limit on annual leave rollover does not alter the fact that employees will either, (a) use the compensatory leave to take additional paid time off, or (b) save an equivalent number of annual leave hours for eventual cash payout.

4. CE Comment: *“Furthermore, the OLO analysis is inconsistent with its earlier analysis of the impact attributed to the furlough leave imposed on all County Government employees.”*

Response: The analogy between a furlough and compensatory time is flawed; unpaid furlough time is fundamentally different from paid time off. During a furlough, taxpayers do not pay an employee’s hourly wage when the employee is not working. The value of furlough time not worked is offset by the hourly wages not paid. As result, OLO did not contend that the furlough resulted in lost value to the taxpayer. In contrast, taxpayers pay hourly wages for compensatory leave but receive no service from the employees during their time off. OLO believes that the taxpayer is impacted by paying the same amount for employee compensation while receiving reduced services for that payment.

Please contact me if you have additional questions related to the fiscal impact of paid time off, or other issues raised in this memo.

Resolution No: _____
Introduced: July 20, 2010
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By:

Subject: Collective Bargaining Agreement with Fraternal Order of Police

Background

1. Section 510 of the County Charter requires the County Council to provide by law for collective bargaining with binding arbitration with an authorized representative of the County police officers.
2. Chapter 33, Article V of the County Code implements Section 510 of the Charter and provides for collective bargaining with representatives of certain police officers and for review of the resulting agreement by the County Council.
3. The County Executive and the Fraternal Order of Police (FOP) have agreed to enter into a new two-year agreement effective July 1, 2010 through June 30, 2012 incorporating all of the terms of the existing agreement with certain amendments. Those amendments are attached to this Resolution.
4. On June 25, 2010, the County Executive submitted to the County Council the terms and conditions of the collective bargaining agreement that require or may require an appropriation of funds or changes in any County law or regulation as an out-of-cycle agreement.
5. The County Council has considered these terms and conditions and is required by law to indicate its intention regarding the appropriation of funds or any legislation or regulations required to implement the agreement.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

1. The County Council rejects the following amendments to the current collective bargaining agreement:
 - a. a one-time award of **26 hours** of compensatory leave to each bargaining unit member, effective January 1, 2011.
 - b. a revised tuition assistance program beginning in FY12 with a maximum cost of \$135,000, but agrees to reconsider this amendment during the FY12 operating budget process.

2. Council Resolution No. 16-1373, paragraph 27, is amended as follows:

27. * * *

Notwithstanding any language in a collective bargaining agreement to the contrary, no County Government employee may receive any paid leave or anything else of value in return for furlough hours taken, and must not receive any additional paid leave in any later collective bargaining agreement. Furlough hours must not adversely affect an employee's accrual of annual and sick leave, crediting of paid time off, life insurance, retirement benefits, or seniority.

3. The County Council approves the amendment that furlough hours would not result in a loss of retirement benefits.

4. The Executive and the union must report the results of any renegotiation or impasse procedure to the Council on or before September 20, 2010.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Resolution No: _____
Introduced: July 20, 2010
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By:

Subject: **Collective Bargaining Agreement with Career Fire Fighters Association**

Background

1. Section 510A of the County Charter authorizes the County Council to provide by law for collective bargaining with binding arbitration with authorized representatives of County career fire fighters.
2. Chapter 33, Article X of the County Code implements Section 510A of the Charter and provides for collective bargaining by the County Executive with the certified representatives of the County's fire fighters and for review of the resulting contract by the Council.
3. The Executive and Local 1664, International Association of Fire Fighters, entered into an amendment to the existing agreement effective July 1, 2010 though June 30, 2011. The Memorandum of Agreement is attached to this Resolution.
4. On June 21, 2010, the Executive submitted to the Council the terms and conditions of the out-of-cycle collective bargaining agreement that require or may require an appropriation of funds, changes in County law or regulation, or may have a present or future fiscal impact.
5. The County Council has considered these terms and conditions and is required by law to indicate its intention to fund or approve any legislation or regulations required to implement the agreement.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

1. The County Council rejects the following amendments to the current collective bargaining agreement:
 - a. a one-time award of **48 hours** of compensatory leave to each bargaining unit member working a 2496-hour work year and a prorated number of compensatory leave hours for each bargaining unit member working a 42-hour or 40-hour work week, effective January 1, 2011;
 - b. an increase of special pay for CRT, EMT-I and EMT-P pay on July 1, 2010, which was previously rejected by the Council in the FY11 Operating Budget approved on May 27, 2010;
 - c. a suspension of random alcohol and drug testing for FY11 and FY12; and
 - d. elimination of the FROMS Physiology Program, effective August 1, 2010, except for the \$100,000 budgeted for equipment. This amendment would have eliminated one filled Grade 27 exercise physiologist position.

2. Council Resolution No. 16-1373, paragraph 27, is amended as follows:

27. * * *
Notwithstanding any language in a collective bargaining agreement to the contrary, no County Government employee may receive any paid leave or anything else of value in return for furlough hours taken, and must not receive any additional paid leave in any later collective bargaining agreement. Furlough hours must not adversely affect an employee's accrual of annual and sick leave, crediting of paid time off, life insurance, retirement benefits, or seniority.

3. The Executive and the union must report the results of any renegotiation or impasse procedure to the Council on or before September 20, 2010.

Resolution No: _____
Introduced: July 20, 2010
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By:

**Subject: Collective Bargaining Agreement with Municipal & County Government
Employees Organization**

Background

1. Section 511 of the County Charter authorizes the County Council to provide by law for collective bargaining, with arbitration or other impasse resolution procedures, with authorized representatives of County Government employees.
2. Chapter 33, Article VII of the County Code implements Section 511 of the Charter and provides for collective bargaining by the County Executive with the certified representatives of County employees and for review of the resulting contract by the County Council.
3. The Executive and UFCW Local 1994, Municipal & County Government Employees Organization, have agreed to amend the existing contract scheduled to expire on June 30, 2011 with the amendments attached to this resolution.
4. On June 25, 2010, the Executive submitted to the Council the terms and conditions of the amendments to the existing collective bargaining agreement that require or may require an appropriation of funds, changes in any County law or regulation, or may have a present or future fiscal impact as an out-of-cycle agreement.
5. The County Council has considered these terms and conditions and is required by law to indicate its intent to approve these amendments.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

1. The County Council rejects the amendment to the current collective bargaining agreement for a one-time award of **26 hours** of compensatory leave to each bargaining unit member, effective January 1, 2011.

2. Council Resolution No. 16-1373, paragraph 27, is amended as follows:

27. * * *

Notwithstanding any language in a collective bargaining agreement to the contrary, no County Government employee may receive any paid leave or anything else of value in return for furlough hours taken, and must not receive any additional paid leave in any later collective bargaining agreement. Furlough hours must not adversely affect an employee's accrual of annual and sick leave, crediting of paid time off, life insurance, retirement benefits, or seniority.

3. The Executive and the union must report the results of any renegotiation or impasse procedure to the Council on or before September 20, 2010.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council