



MEMORANDUM

TO: Management and Fiscal Policy Committee

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

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

On April 19, the Committee discussed the amendments to the County's collective bargaining agreements with the Municipal and County Government Employees Organization (MCGEO), representing County employees who are in the OPT and SLT bargaining units, and the Fraternal Order of Police (FOP), representing members of the police bargaining unit. See ©1-38 (MCGEO Agreement, Summary, Arbitrator's Decision) and ©39-69 (FOP Agreement, Summary, Arbitrator's Decision). The OMB Fiscal Impact Statement for these Agreements is at ©107-111.

Both these agreements resulted from an arbitrator's decision resolving an impasse in the negotiations between the County Executive and the respective union. The Opinion and Award of Arbitrator Herbert Fishgold in favor of the FOP is attached at ©55-69. The Arbitration Decision resolving the impasse with MCGEO in favor of the County issued by Arbitrator M. David Vaughn is at ©14-38.

The Committee also discussed the collective bargaining agreement with the third County bargaining unit, the firefighters unit represented by the International Association of Firefighters (IAFF), at the April 19 meeting. This Agreement does not expire until June 30, 2011, but the existing contract contains several negotiated provisions that require Council appropriation of funds. A copy of the current agreement with the IAFF along with the Executive's recommendations for funding the agreement in FY11 is at ©70-106.

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

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

If the Council indicates its intention to reject or opts not to fund any item, it must designate a representative to meet with the parties and present the Council's views in their further negotiations. The parties must submit the results of any further negotiations, or impasse procedures if the parties cannot agree on a revised contract, to the Council within 10 days after the Council indicates its intent to reject an item. A primer describing the Council's role in collective bargaining written by the County Attorney last year is at ©112-116.

Collective Bargaining Agreements

A chart showing the items in each collective bargaining agreement subject to Council review is at ©117. Each of these items is described below.

1) **Ghost General Wage Adjustment:** FOP Lodge 35, MCGEO Local 1994, and IAFF Local 1664 entered into "concession agreements" with the Executive last year that postponed the negotiated general wage adjustments (GWA) scheduled for July 1, 2009. However, each concession agreement also provided that the calculation of regular earnings used to determine a retirement benefit would include the FY10 GWA as if the employee had received it on July 1, 2009.² The FOP Agreement and the IAFF Agreement would continue this imputed compensation into the calculation of regular earnings used to calculate a defined benefit pension for the rest of a bargaining unit member's County career. The MCGEO Agreement would continue this ghost GWA for its members who are either public safety employees (Deputy Sheriffs and Corrections Officers) or non-public safety members who were hired before October 1, 1994. All of the other MCGEO members who are in the Retirement Savings Plan (RSP) or the Guaranteed Retirement Income Plan (GRIP) received a one-time additional employer contribution of .36% of salary in FY10, but would not receive a carryover into FY11 and beyond under this Agreement.

The Executive's March 15 Recommended FY11 Budget included funding for this ghost GWA within the annual County contribution to the ERS Trust Fund. On April 22, the Executive submitted a revised Recommended FY11 Budget that does not contain funding for this ghost

¹ The Council extended this deadline to May 15 by Resolution No. 16-1315 adopted on April 27, 2010.

² Employees of the Montgomery County Public Schools also agreed to "postpone" a negotiated general wage adjustment for FY10, but did not receive this imputed compensation.

GWA. The County's actuary, Mercer, estimated the FY11 cost for this ghost GWA to be \$7.025 million. A copy of the OMB Fiscal Impact Statement for Expedited Bill 16-10, Personnel – Retirement - Imputed Compensation Limit, is at ©120-124. Expedited Bill 16-10, introduced on April 6, is scheduled to be reviewed by this Committee on April 29. The Council staff packet for Bill 16-10 analyzes these issues in greater detail. Although the ghost GWA is subject to funding by the Council in FY11, the Council must enact Bill 16-10 to amend the retirement law to limit the ghost GWA to FY10 only. A copy of a Council staff legal opinion describing the authority of the Council to reject funding for the ghost GWA is at ©118-119. **Council staff recommendation:** reject funding for the ghost GWA beyond FY10 and enact Bill 16-10.

2) **MCCEO agreement:** Employees at normal retirement age, or within two years of it, will be eligible for a one-time \$35,000 buyout incentive and a waiver of the early retirement penalty, with participating employees scheduled to retire on June 1. The program is limited to employees who are in a class of positions targeted for the RIF in order to avoid some of the forced terminations. *The Council enacted Expedited Bill 9-10, Personnel – Retirement Incentive Program, on April 27 implementing the retirement incentive program.*

3) **FOP agreement:** The Arbitrator's decision adopted the FOP proposal to fund service increments for police officers at an estimated cost of \$1.2 million. The Executive's proposed budget would not fund these service increments.³ The cost of funding general wage adjustments or service increments in FY11 is discussed in detail in Mr. Farber's packet on employee compensation which will also be discussed at this worksession. **Council staff recommendation:** reject funding for the FOP service increment.

4) **FOP agreement:** The current member of the Board of Investment Trustees nominated by the union representing the police bargaining unit is subject to a 3-year term. Under current law, the Executive has the discretion to appoint a different representative of the employees in the police bargaining unit after the member's 3-year term expires. The Executive would no longer have this authority under the Agreement. The trustee designated by the FOP would serve indefinitely until replaced by the FOP. The Executive has not yet transmitted legislation to the Council that would make this change. This change would be consistent with legislation enacted by the Council last year for the trustees designated by the IAFF and MCCEO. **Council staff recommendation:** approve this provision.

5) **FOP agreement:** The Agreement would create a new expert skill level for multilingual skill pay for police officers. Officers certified at the expert skill level would receive an additional 3 dollars per hour for all hours worked. Officers at the basic skill level would continue to receive 1 additional dollar per hour and officers at the advanced skill level would continue to receive an additional 2 dollars per hour. OMB estimated the FY11 cost for this new program to be \$12,950 assuming implementation in January 2011. It is unclear if the program would be limited to languages that the Department needs the most? In addition, there is no evidence that the Department has had trouble recruiting police officers with these multilingual skills? Can the County justify creating a new pay differential for selected employees while using a RIF and employee furloughs to balance the budget? **Council staff recommendation:** reject funding for this provision.

³ The Executive's FY11 Recommended Budget would not fund a GWA or a service increment for any County government employee.

6) **FOP agreement:** The Agreement would provide additional compensation for police officers assigned to the Police Aviation Unit. Pilots and co-pilots would receive an additional \$3500 per year regardless of flight status. Observers and flight officers would receive an additional \$1500 per year. The OMB fiscal impact statement estimates the annual cost at \$10,200. It is unclear if this pay differential is necessary to recruit police officers qualified to pilot helicopters. How can the County justify creating a new pay differential for selected employees while using a RIF and employee furloughs to balance the budget? **Council staff recommendation:** reject funding for this provision.

7) **IAFF Agreement:** The IAFF Agreement covers the period from July 1, 2008 through June 30, 2011. The Agreement would provide a 3.5% GWA, a 3.5% pay plan adjustment, and a 3.5% service increment for FY11. The Executive's Recommended FY11 Budget would not fund any of these compensation increases. These compensation provisions will be discussed in detail as part of the discussion of employee compensation and benefits. How can the County justify these pay raises for selected employees while using a RIF and employee furloughs to balance the budget? **Council staff recommendation:** reject funding for these pay raise provisions.

8) **IAFF Agreement:** The IAFF Agreement also provides increases in certain special pay differentials for cardiac rescue technicians and emergency medical technicians for FY11. The Executive's Recommended FY11 Budget would fund these increases in special pay differentials. The OMB Fiscal Impact Statement attached a chart from the Executive's FY09 Recommended Budget estimating the FY11 cost for the increased special pay differentials at \$199,670. It is unclear if these special pay differentials are necessary to recruit employees qualified for CRT and EMT certifications. How can the County justify new special pay differentials for selected employees while using a RIF and employee furloughs to balance the budget? **Council staff recommendation:** reject funding for this provision.

9) **Tuition Assistance:** The MCGEO agreement suspends the tuition assistance program for FY11. Both the FOP Agreement and the IAFF Agreement provide for tuition assistance. The Executive's FY11 Recommended Budget does not fund tuition assistance for any employee. How can the County justify continuing the tuition assistance program for employees while using a RIF and employee furloughs to balance the budget? **Council staff recommendation:** reject funding for this provision.

This packet contains:

	<u>Circle #</u>
Executive Transmittal Memo for MCGEO Agreement	1
MCGEO Agreement and Summary	2
MCGEO Arbitration Decision	14
Executive Transmittal Memo for FOP Agreement	39
FOP Agreement and Summary	40
FOP Arbitration Decision	55

Executive Transmittal Memo for IAFF Agreement	70
Current IAFF Agreement and Summary	71
OMB Fiscal Impact Statement	107
County Attorney Primer on Collective Bargaining	112
Chart of Items subject to Council review	117
Council staff legal opinion dated April 22, 2010	118
Expedited Bill 16-10 Fiscal Impact Statement	120

F:\LAW\TOPICS\Collective Bargaining\10collbar\MFP Memo 4-29-10.Doc

GOVT



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive


has - BD
CC
SBF
have { LL
MF
LAM
SJF

MEMORANDUM

April 14, 2010

055931

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Memorandum of Agreement between the County and MCGEO

I have attached for the Council's review the Memorandum of Agreement resulting from the recent collective bargaining discussions between the Montgomery County Government and the Municipal & County Government Employees Organization/United Food and Commercial Workers Union Local 1994 (MCGEO). The agreement is the product of an Interest Arbitration Decision by arbitrator M. David Vaughn in favor of the County. A copy of the Opinion and Award is attached. 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

IL: sw

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2010 APR 14 PM 4:23

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

The Montgomery County Government (Employer) and the Municipal & County Government Employees Organization/United Food and Commercial Workers Union Local 1994 (Union), agree that their collective bargaining agreement effective July 1, 2007, through June 30, 2010, is extended in full force and effect for the one-year term July 1, 2010, through June 30, 2011, subject to the amendments shown on the following pages

Please use the key below when reading this regulation:

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing regulation by proposed regulation.</i>
[Single boldface brackets]	<i>Deleted from existing regulation by proposed regulation.</i>

The parties agree to amend the contract as follows:

* * *

Article 5 Wages, Salary and Employee Compensation

5.1 Fiscal Year Salary Schedules

Bargaining unit members are eligible for service increments of 3½ percent each. A service increment may be granted only to the extent that an employee's salary does not exceed the maximum salary for the assigned grade. Receipt of a service increment shall be conditioned upon the provisions of Article 6, Service Increments. Beginning the first pay period following January 1, 2008, a longevity increment will be added to the salary schedules found in Appendix VII for bargaining unit members who are at the maximum of their pay grade and have completed 20 years of service (beginning of year 21) equal to a 3 percent increase. Both the granting of additional service increments and initial progression to the longevity pay increment will be suspended for the duration of this Agreement, effective July 1, 2010. For the duration of this Agreement, Appendix VII C shall remain as it was effective July 6, 2008.

5.2 Wages

* * *

- (c) Effective the first full pay period following July 1, 2009, each unit member shall receive a 4.5 percent increase. Bargaining unit employees shall be paid a base salary pursuant to the uniform pay plan, which appears in Appendix VIIC of this agreement. This General Wage Adjustment shall be postponed and not effective during FY2010, or FY 2011.

* * *

Article 6 Service Increments

* * *

- 6.8 Effective July 1, 2010, grant of service increments and the initial progression to the longevity step shall be suspended for the duration of this Agreement.

* * *

Article 9 Working Conditions

* * *

9.10 Classification Issues

* * *

- (e) Classification reviews shall be suspended under FY 2011 unless otherwise agreed to by the parties. Any classification reviews initiated prior to June 30, 2010 shall be completed as required under the collective bargaining agreement.

[(e)]

- (f) Classification and grade level review of an occupational class that is predominately populated by OPT or SLT bargaining unit positions, or a review of the classification assignment of an individual position, may be requested by the Union at any time during the month of June.

[(f)]

- (g) Requests for an occupational class study must document factual evidence of a material change in the duties/responsibilities of the job class, and must clearly demonstrate that said changes have substantially affected the work of the class. Within 30 days of receipt of a request to study an occupational classification, OHR shall inform the Union of the acceptance or denial of the request.

[(g)]

- (h) An occupation classification study request will not be reviewable more often than every 36 months from the completion of the most recent study. However, the OHR Director shall determine if an occupational classification study is justified within a period less than 36 months, based upon reorganization or significant restructuring. Denial of study requests shall not be grievable or arbitrable.

[(h)]

- (i) OHR will inform the Union of its intent to study an occupational class that is encumbered by union positions, or an individual bargaining unit position, when the request for the study was not initiated by the Union. Prior to a decision to study a class, the Union may request a conference with the OHR Director.

[(i)]

- (j) Position classification decisions are not grievable. However, UFCW Local 1994 MCGEO may request the review of any classification recommendation by an independent classification expert. When such requests are made:

* * *

[(j)]

(k) Subject to Article 2 of the Agreement, individual position classification review requests shall continue to be made and processed pursuant to AP 4-2. Such requests shall not be grievable pursuant to this Agreement.

[(k)]

(l) Each bargaining unit member whose position is reclassified upward, or whose job class is reallocated upward, will have his or her service increment date reassigned to the effective date of the classification decision. Bargaining unit members will be eligible for a future service increment 12 months from the newly reassigned increment date.

[(l)]

(m) If the reassignment of an employee's increment date under Section 9.10 (k) creates any pay inequities affecting other employees, the parties agree that the County will resolve such pay inequities by applying Section 7.1, "Special within grade advancement", of this agreement.

[(m)]

(n) In the event the Employer considers a classification or job evaluation system that is substantially different from a QES system, the parties agree to meet and confer on the issue. Further, the Employer and the Union will negotiate the salary and wage impact of the implementation of such a system upon bargaining unit positions.

* * *

Article 19 Administrative Leave

19.1 Approval Authority

* * *

(m) Union Votes

Bargaining unit members shall be granted up to two (2) hours of Administrative Leave to attend a contract ratification meeting.

* * *

Article 20 Holiday Leave

* * *

20.13

Should a day designated herein as a holiday occur while an bargaining unit member is on sick leave, that day shall be observed as a holiday and shall not be charged against sick leave for pay purposes.

* * *

Article 21 Benefits

* * *

21.10 Tuition Assistance

* * *

- (g) Effective July 1, 2010, tuition assistance will be suspended for the duration of this agreement.

* * *

Article 27 Reduction-in-Force

* * *

27.2 Policy

* * *

During FY 2011, a bargaining unit employee will not be laid off if there is a probationary, temporary or seasonal employee in the same occupational series and status, provided the employee to be laid off meets the minimum qualifications of the position to which they would be transferred. In this Article, status is defined as part-time versus full-time. In addition, during FY 2011, any reduction-in-force of unit members will be preceded by the County government's consideration of the following alternatives:

1. The offering of Discontinued Service Retirements (Administrative Retirements) to eligible bargaining unit job classes/occupational series affected by position abolishment resulting from the approved FY 2011 operating budget. The Discontinued Service Retirement must be effective no later than June 1, 2010.
2. The offering of a Retirement Incentive Plan as outline in Attachment II, to be extended to all bargaining unit job classes/occupational series affected by position abolishment resulting from the approved FY 2011 operating budget. The RIPs will be effective June 1, 2010.
3. The offer RIPs along the lines of that which is outlined in Attachment II may be offered at subsequent points during FY2011.

* * *

Article 36 Union Activities

* * *

36.5 Administrative Leave for Secretary/Treasurer or Recorder

The Secretary/Treasurer or Recorder, at the discretion of the President of the UFCW Local 1994 MCGEO effective December 31, 2011 shall be released from work 80 hours per pay period to engage in representational activities of the Union. Each member of the bargaining unit will be assessed ½ hour for each year of this Agreement of annual or compensatory leave, which leave shall be contributed to an administrative leave bank for the purpose of providing administrative leave to the Secretary/Treasurer or Recorder.

* * *

Article 42 Duration

This contract embodies the whole agreement of the parties and may not be amended during its term except by mutual written agreement. This Agreement shall become effective July 1, [2007] 2010, and terminate June 30, [2010] 2011. Renegotiations of this Agreement shall begin no later than November 1, [2009] 2010, and shall proceed pursuant to the County Collective Bargaining Law.

* * *

Appendix I Unit Sheriffs

* * *

(t) The following items will be referred to the Countywide LMRC:

1. Work Out Facility: The Employer will provide deputies with work out facility, or cover the cost of membership to a health club facility;
2. Cell Phones: All Civil Deputies will be issued cell phones;
3. MDT: All field unit vehicles shall have MDT unit installed prior to being put into use.

Appendix II Department of Health and Human Services

* * *

(j) The County and the Union agree that this Agreement does not provide workload and caseload assignment standards. This provision does, however, represent the parties' best efforts to assess the staffing needs of DHHS and work in partnership to improve the quality of services wherever possible.

To that end, [the Union will identify programs within HHS where concerns regarding the absence of staffing and caseload standards are identified. If caseload standards for that program do not exist, a committee comprised of 3 MCGEO representatives and 3 management representatives will meet to assess the caseload and staffing ratios. The committee will submit findings and recommendations to the Department Director and the Countywide LMRC no later than December 1, 2008] the parties agree to contract the services of a third party consultant who is experienced in the field of health and human services to evaluate the caseloads /workloads of each professional job classification to determine whether caseloads/workloads are in compliance with professional standards and-or state/ federal guidelines. Should the consultant determine that additional staff is needed to better manage caseloads/workloads the parties shall negotiate over such recommendation.

* * *

(q) 401 Hungerford

* * *

3. The following items will be referred to the LMRC:
 - Vehicles.

- Install security cameras in garage at 401 Hungerford, with monitors at the security desk at 401 Hungerford and the Security Command Center.
- Remove all damaged and moldy carpeting on 7th floor lobby and hallways.
- Install traffic mirrors in parking garage.

* * *

(t) 255 Rockville Pike

* * *

5. The following items will be referred to the Countywide LMRC:

- Install security cameras in garage at 255 Rockville Pike, with monitors at the security desk at 255 Rockville Pike and the Security Command Center.

* * *

(aa) Miscellaneous

* * *

5. The following items will be referred to the Countywide LMRC:

- Provide panic alarms in all rooms/offices where employees provide direct service at 2424 Reddie Dr.

Appendix III Department of Police, Crossing Guards, and Forensic Specialists

* * *

(o) ECC

* * *

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

- Continued review of, and possible updates to, ECC policy.
- Enhanced interior lighting.
- The perimeter of the PSSC shall be fenced.

* * *

(p) Crossing Guards

* * *

5. The following item will be referred to the Countywide LMRC

- All Crossing Guards shall be issued: 1 rain jacket, 1 pair of rain pants, 1 rain hat, 1 pair of water proof boots/shoes and gloves, 1 pair of ski-bib insulated pants, 1 insulated winter hat with ear protectors and 5 pair of summer shorts.

* * *

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

- Uniform allotment for each specific civilian unit.
- Improved parking at all locations

(s) Automated Traffic Enforcement Unit – Field Service Technicians

1. The following items will be referred to the Countywide LMRC:
 - Laser metro counters shall be provided.
 - IT certification courses shall be provided.

(t) Public Safety Training Academy

1. The following item will be referred to the Countywide LMRC:
 - Adequate noise barriers in all unit work stations shall be installed no later than December 1, 2010.

Appendix IV Department of Corrections and Rehabilitation

* * *

(o) DOCR CHN Items

* * *

4. The following items [is] are referred to the LMRC:
 - New copier in medical office in MCCF.
 - Provide computerized medical records program.

(p) MCCF

1. The following items are referred to the LMRC:
 - * * *
 - The staff parking lot shall have secured access, to include gates and swipe cards.

(q) MCDC

1. The following items are referred to the LMRC:
 - * * *
 - Install secure fence for staff parking lot.
 - Additional computers shall be added to officer workstations, and all computers shall have the ability to write and review electronic reports.
 - Regular equipment maintenance.
 - * * *

(r) PRC

1. The following items [is] are referred to the LMRC:
 - Provide additional employee parking [.]
 - Issue body alarms to all unit members.
 - * * *

(s) Pre-Trial

1. The following items are referred to the LMRC:

* * *

- Provide body alarms for unit members;
- Institute a weapons screening policy to include use of (metal detectors/wands);
- Develop a security protocol which specifically restricts client movement in facility;
- Install locks leading into all unit work areas;

* * *

Appendix V Department of Liquor Control

* * *

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

* * *

- The department shall reduce the height of stacked product in the stores and warehouse to agreed upon acceptable heights;
- Additional charging stations and extra batteries shall be provided on the floor for all forklifts;
- A mechanic shall be assigned on site at the warehouse;
- Battery washing Station;

* * *

Appendix VI Department of Transportation

(a) Transit Services - Ride-On

* * *

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

- Professional cleaning of the office annually;
- County physicals for operators/coordinators should be so scheduled that unit members do not have to report for duty prior to their physical.
- Updated phone system

* * *

Appendix XII Homeland Security

* * *

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

- Issue cell phones to mobile patrols;
- SUVs with security emblem;
- Replace all chairs at security posts with ergonomically designed chairs;
- Expand CCTU surveillance and security patrols and implement two officer patrols during the hours of 5:00 pm to 6:00am.

* * *

Appendix XIV Department of Fire and Rescue

- (a) The following items [is] will be referred to the LMRC:
- Provide color copier.
 - Mechanics assigned to the Central Maintenance Garage shall be granted a lump sum tool allowance of \$1500 in FY '11 in order for them to purchase tools to be in compliance with the County requirement of maintenance of a basic tool set

* * *

Side Letters

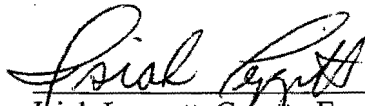
Joint Contract Training with HHS and MCGEO

This letter shall serve to confirm the agreement of MCGEO and the Department of Health and Human Services to jointly conduct a series of training sessions on the subject of the administration and implementation of the collective bargaining agreement's provisions regarding overtime and the requirements of FLSA.

Stone Street Print Shop

A voluntary overtime list, identifying those bargaining unit members assigned to the Stone Street Print Shop who wish to perform overtime work, shall be developed. Employees on that list shall be afforded the first opportunity to fulfill overtime needs necessary for completion of printing projects for the Montgomery County Government, subject to exceptions based on operational needs such as knowledge, skills, and abilities as determined by the Employer. Bargaining Unit employees shall be assigned such overtime opportunities on a rotating basis in order of seniority from among those employees in the classification who are on the voluntary overtime list and able to perform the work subject to the above exceptions. This provision shall not prevent the use of MCPS employees to perform overtime work on printing projects for the Montgomery County Government as necessary for completion of the projects in the judgment of the manager of the Stone Street Print Shop.

FOR THE EMPLOYER



Isiah Leggett, County Executive

April 14, 2010
Date

FOR THE UNION



Gino Renne, President

4/12/10
Date

Summary of Proposed Labor Agreement with MCGEO for FY 2011

No.	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
1.	5.1/ Salary Schedule	Service increments and movement into longevity pay will be suspended for FY 11	No	No	No	Yes	
2.	5.2/ General Wage Adjustment	<p>The GWA shall be postponed and not effective during FY 11</p> <p>If the County government or MCPS grants service increments to any employees, the contract shall be reopened to discuss service increments for unit members</p>	No	No	No	Yes	
3.	6.8/ Service Increments	Service increments and longevity shall be suspended for duration of contract	No	No	No	Yes	
4.	9.10/ Classification Issues	<p>All classification reviews will be suspended for FY 11 unless parties agree</p> <p>Reviews initiated prior to June 30, 2010 will be completed</p>	No	No	No	Yes	
5.	19.1/ Admin Leave	Members shall received up to 2 hours admin leave to attend ratification meeting	No	No	No	Yes	
6.	20.13/ Holiday Pay	Should an employee be on sick leave during a designated holiday; the employee will not be charged with sick leave	No	No	No	Yes	
7.	21.10/ Tuition Assistance	The tuition assistance program will be suspended for duration of contract	No	No	No	Yes	

Summary of Proposed Labor Agreement with MCGEO for FY 2011

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
8.	27.2/ Reduction in Force	<p>Bargaining unit members in affected classes shall not be laid off if there is a probationary, temporary or seasonal employee in same occupational series and status</p> <p>Member must meet minimum qualifications of position to be transferred</p> <p>To avoid any RIF, the County shall offer Discontinued Service Retirements and/or Retirement Incentive Programs to series/classes affected by position abolishment</p> <p>Retirements must be effective June 1, 2010</p>	No	No	No	Yes	
9.	36.5/ Union Activities	Union Recorder shall be given option to receive 80 hours administrative leave for representational activities of the Union	No	No	No	Yes	
10.	42/ Duration of Agreement	<p>July 1, 2010 – June 30, 2011</p> <p>Renegotiations to begin no later than November 20, 2010</p>	No	No	No	Yes	
11.	Appendix I/ Sheriffs	Refer to LMRC: Workout facility; Cell phones for Civil section; MDT's for all field service vehicles	No	No	No	Yes	
12.	Appendix II/ HHS	Refer to LMRC: 401 Hungerford - security cameras, carpet replacement in lobby and hallway, traffic mirrors in parking garage; Third party consultant for case loads; 255 Rockville Pike – security cameras; Reedie Drive – panic buttons	No	No	No	Yes	

Summary of Proposed Labor Agreement with MCGEO for FY 2011

Page 3

No.	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
13.	Appendix III/ Police	Refer to LMRC: Improved parking lot lighting; ECC – enhanced interior lighting and fenced perimeter; Crossing Guards – ski pants, rain/winter gear; Automated Traffic Enforcement Unit – laser metro counters and IT certification courses; Public Safety Training Academy – noise barriers at work stations	No	No	No	Yes	
14.	Appendix IV/ DOCR	Refer to LMRC: CHN – computerized medical records; MCCF – secured parking lot; MCDC – secured parking lot, computers for work stations and equipment maintenance; PRC – increase employee parking and body alarms; Pre-Trial – body alarms, weapons screening policy and security protocol	No	No	No	Yes	
15.	Appendix V/ Liquor Control	Refer to LMRC: New shelving in stores; Charging stations/batteries for forklifts; Mechanic station; Battery washing station	No	No	No	Yes	
16.	Appendix VI/ DOT	Refer to LMRC: Updated phone system for Ride-On	No	No	No	Yes	
17.	Appendix XII/ Homeland Security	Refer to LMRC: Ergonomical chairs and CCTV cameras	No	No	No	Yes	
18.	Appendix XIV/DFRS	Refer to LMRC: Lump sum tool allowance	No	No	No	Yes	
19.	Side Letter/ Training Sessions	MCGEO and HHS to jointly train on administration and implementation of collective bargaining agreement's provisions on overtime and FLSA	No	No	No	Yes	
20.	Side Letter/ Stone Street Print Shop	Voluntary overtime list shall be developed and employees on list shall be given first opportunity to fill overtime needs	No	No	No	Yes	

IN ARBITRATION

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

and

Interest Arbitration,
2010-2011 Agreement

MUNICIPAL AND COUNTY GOVERNMENT EMPLOYEES
ORGANIZATION, UFCW LOCAL 1994

Before M. David Vaughn, Arbitrator

OPINION AND AWARD

This proceeding between Montgomery County, Maryland ("Montgomery County," the "County" or the "Employer"), and the Municipal and County Government Employees Organization, UFCW Local 1994 ("MCGEO," "Local 1994" or the "Union") (together, the County and the Union are the "Parties" to the proceeding) takes place to determine the terms of a one-year agreement to succeed an agreement which will expire, by its terms, on June 30, 2010.

The Parties engaged in collective bargaining with respect to the extension agreement, but were unable to agree on terms and reached an impasse. Pursuant to the *Montgomery County Code* [Chapter 33 (Personnel and Human Resources), Article VII (County Collective Bargaining), § 33-108 (Bargaining, impasse, and legislative procedures)], the Parties selected me as Mediator/Arbitrator. Mediation efforts were conducted February 2-4 and 8-12, 2010 which brought the Parties closer together but were unsuccessful in completely bridging the gap between them.

Throughout the proceeding, the Union was represented by Carey R. Butsavage, Esq., of the law firm of Butsavage & Associates, P.C., and the County by Robert G. Ames, Esq., and James E. Fagan, III, Esq., of the law firm of Venable LLP.

The Parties agreed that I am to select, on a total package basis, from the Last, Best and Final Offers ("LBFO"s) submitted by the Parties. Pursuant to agreement and my direction, the Parties exchanged and provided to me at close of business on February 23, 2010, their LBFOs. The Parties had further discussions with each

other and with me between that date and commencement of the hearing. Those efforts were not successful in resolving the dispute.

The hearing convened in Gaithersburg, Maryland, on February 27, 2010, and continued on February 28, 2010. A court reporter was present at the hearing; by agreement of the Parties, the verbatim transcript (page references to which are designated ("Tr. ____")) which he caused to be prepared constitutes the official record.

At the commencement of the hearing, the Union requested to amend its LBFO to take into account the discussions between the Parties that had occurred subsequent to submission of the LBFOs on February 23. Over the County's protest, I granted the Union's request to amend its LBFO (Tr. 12), which dropped earlier proposals, including retention of [pay increments] and brought the Union's position closer to that of the County. I provided a similar opportunity to the County to amend its LBFO, which it declined. (*Id.*) The Union's amended LBFO is quoted hereinbelow, as is the County's LBFO.

In the proceeding, the Parties were each afforded full opportunity to present witnesses and documents and to cross-examine witnesses and challenge documents offered by the other. Witnesses were neither sworn nor sequestered. For the Union testified UFCW Local 1994 President Gino Renne. Office of Human Resources ("OHR") Director Joseph Adler, OHR Manager III Melissa Boyd Davis and Office of Management and Budget Director Joseph F. Beach testified at the call of the County.

Offered and received into the record during the hearing were Joint Exhibits 1-2 ("J. Ex. ____"), Union Exhibits 1-8 ("U. Ex. ____") and County Exhibits 1-14 ("Co. Ex. ____")

The Parties were able, during the course of bargaining, to reach tentative agreement on numerous issues. The articles tentatively agreed to were subject to final agreement on the entire

contract. They also agreed that of the provisions of the expiring agreement which are not included in the list of items in dispute were tentatively agreed to, either on the basis of the language from the 2007-2010 Agreement (if neither Party offered proposals to change them) or on the basis of agreement reached during negotiations, including informal negotiations which took place during the mediation/interest arbitration process. The Award incorporates agreed-upon contract provisions and makes them a part of the terms of the agreed-upon Articles.¹

At the conclusion of the hearing the record was held open to receive documentation from the County concerning bargaining unit occupational series and positions that cross department lines. (Co. Ex. 13)² Upon their receipt by e-mail on March 2, 2010, the evidentiary record was completed. The Parties elected to close by written post-hearing briefs. The record of proceeding closed on March 12, 2010, upon receipt of both briefs, an extension of two days from the agreed date having been granted, over the County's objection, in order to allow completion of the proceeding before the LRA.

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

¹On February 27, 2010, at the conclusion of the Union's case-in-chief, the County moved for "the equivalent of a directed verdict" on the basis that the Union's LBFOs (both its initial LBFO of February 23 and its final LBFO of February 27) "contain on their face proposals that are non-negotiable." (Tr. 65-66) The County repeated this contention the following day in its opening statement. (Tr. 92) It then filed a negotiability appeal with Andrew M. Strongin, Montgomery County's Labor Relations Administrator. The Union charged the County with bad faith bargaining. In a Decision and Order dated March 7, 2010 (LRA Case Nos. 10-108-01 and 10-109-02) following a consolidated proceeding concerning both matters, LRA Strongin found the Union's LBFO to be negotiable in all respects. LRA Strongin also sustained the Union's charge of bad faith bargaining. However, he subsequently denied the Union's requested remedy of being allowed to submit a further revised LBFO.

²The County also submitted, by e-mail on March 1, 2010, information concerning the RIF procedure from "comparable" jurisdictions, specifically Baltimore City (AFSCME Local 44 and City Union of Baltimore/AFT Local 800) and Baltimore County (AFSCME Local 921). (Co. Ex. 14) The Union referenced them in its Post-Hearing Brief (p. 15) and raised no objection to their receipt.

Interest Arbitration process were Reduction-in-Force (Article 27) and Retirement (Article 41).

This Opinion and Award is based on the record of proceeding and considers the arguments of the Parties, as well as the welfare of the public. In accordance with the County Code and by agreement of the Parties, I provided mediation assistance in the process; however, information and bargaining positions learned during mediation are not considered and are not relied on herein.

The evidence is discussed, the positions of the Parties summarized and the LBFO awarded is announced below. As indicated, it is my responsibility to choose, on a total package basis, one or the other of the LBFOs submitted by the Parties.

THE LBFOs OF THE PARTIES

The actual LBFOs of both Parties include proposals on articles that, prior to the conduct of the first day of hearing, were resolved between them. Issues that were resolved include proposals on Articles 5 (Wages, Salary and Employee Compensation), 6 (Service Increments), 9 (Working Conditions), 21 (Benefits) and 42 (Duration). These portions of the Parties' respective LBFOs having been resolved, they are not reproduced below.

The Union's amended LBFO is as follows:

ARTICLE 27 REDUCTION-IN-FORCE

27.2 Policy

Change last paragraph to read:

A bargaining unit employee will not be laid off if there is a probationary, temporary or seasonal employee in the same occupational series.

No reduction-in-force of bargaining unit members will be implemented until all of the following alternatives have been exhausted:

1. Implement a hiring freeze.
2. Discontinued Serv[ic]e Retirement.
3. Retirement Incentive Program.
4. Elimination of all vacant bargaining unit positions where the position has been vacant for a period of six (6) months and the County cannot demonstrate a need for the position.
5. As a first step in the Executive's budget preparation process, form a Labor Management Committee specifically for the purpose of making proposals for the reduction/elimination of services in departments effected by any potential reduction-in-force. The County would consider the proposals made by the committee, but could accept or reject such based on operational needs.
6. Reduce or suspend expenditures for training or travel, and provide to the Union any and all reductions and/or suspension in expenditures.
7. Reduce working hours in departments where proposed reductions in force are to occur.

In the event a reduction in force is necessary, the reduction shall proceed in the following order:

- a) Employees shall be laid off in reverse order of County seniority within the affected occupational series.
- b) In the event that a reduction in force result sin the need for redistribution of employees from superior ranks to lesser ranks or from a higher classification to a lower classification within an occupational series, such redistributions shall be accomplished by reducing in rank or class those employees with the least seniority in the affected rank/classification counting from the employees date of promotion/hire.

Exceptions:

- (a) In certain circumstances the County may request that an employee scheduled for

layoff be retained if they possess unique skills and qualifications that make it impossible for another employee in the same occupational series to perform the essential service effectively.

An Appointing Authority must justify not laying off this employee by indicating that the specialized skills required by the nature of the work could not be acquired by another employee in the affected occupational series within six (6) months on the job given appropriate training.

- (b) Should the County decide not to implement any of the above steps to avoid a reduction-in-force, an Appointing [A]uthority must demonstrate that operational needs cannot otherwise be met.

Should a dispute arise by the County's exercising these exceptions the matter shall be sent to Expedited Arbitration in accordance with Article 11 of this Agreement.

ARTICLE 41 RETIREMENT

Retirement Incentive Program (RIP)

Any savings realized from this proposal shall be used exclusively for the purposes of avoiding any layoffs of bargaining unit members.

The County's LBFO is as follows:

ARTICLE 27 REDUCTION-IN-FORCE

27.2 Policy

Add to the last paragraph:

During FY 2011, a bargaining unit employee will not be laid off if there is a probationary, temporary or seasonal employee in the same occupational series and

status, provided the employee to be laid off meets the minimum qualifications of the position to which they would be transferred. In this Article, status is defined as part-time versus full-time. In addition, during FY 2011, any reduction-in-force of unit members will be preceded by the County government's consideration of the following alternatives:

1. The offering of Discontinued Service Retirements (Administrative Retirements) to eligible bargaining unit job classes/occupational series affected by position abolishment resulting from the approved FY 2011 operating budget. The Discontinued Service Retirement must be effective no later than June 1, 2010.

2. The offering of a Retirement Incentive Plan as outline[d] in Attachment II, to be extended to all bargaining unit job classes/occupational series affected by position abolishment resulting from the approved FY 2011 operating budget. The RIPS will be effective June 1, 2010.

3. The offer[ing of (sic)] RIPS along the lines of that which is outlined in Attachment II may be offered at subsequent points during FY 2011.

POSITIONS OF THE PARTIES

The positions of the Parties in support of the adoption of their respective LBFOs were set forth in opening statements, during the hearing, and in their post-hearing briefs. They are summarized as follows:

The Union argues that I should adopt its LBFO as the "most reasonable." It asserts that its priorities, throughout these negotiations, have been to maintain jobs for its members and, in the event of layoffs, to ensure the most equitable process for effectuating those layoffs. It maintains that, through its LBFO, it seeks to guarantee that jobs, and the services to the public those jobs represent, are preserved by requiring that the County take certain basic steps prior to, and in the course of, implementing any potential reduction in force ("RIF").

MCGEO further argues that its LBFO is more reasonable than the County's because it is similar to the RIF procedures already in place between the Parties, procedures which have been in place, and have been utilized, for many years without objection from the County. It contends, by way of example, that County Administrative Procedure ("AP") 4-19 (J. Ex. 2) already requires that the County implement various steps - hiring freeze, Discontinued Service Retirement, eliminate vacant positions ("effective position management"), reduce or suspend training and travel expenditures and reduce working hours - prior to a RIF. The Union asserts that the only difference between its proposal and AP 4-19 is that it would have the right to grieve and challenge the County's use of its exceptions.

The Union argues that its LBFO is also reasonable because the procedures it requires are comparable to ones that other public employers in the immediate vicinity, including Montgomery County itself, utilize prior to implementing a RIF. It contends that the Housing Opportunities Commission ("HOC") agreement (U. Ex. 4) requires department heads to exhaust certain alternatives prior to implementing a RIF, for example, to "reduce working hours" prior to implementing a RIF, a requirement identical to item 7 of its LBFO. Similarly, it asserts that the Maryland-National Capital Park and Planning Commission ("M-NCPPC") agreement (U. Ex. 3) requires department heads to consider certain alternatives to RIFs prior to implementation, including implementing a hiring freeze, minimizing overtime and implementing a furlough and reducing or suspending training and travel expenditures. The Union maintains that the County failed to demonstrate that its proposal has any relation to the Parties' bargaining history or past collective bargaining agreements or that its proposal is reasonable with regard to comparable statutes and procedures. It contends that Baltimore City is not usually considered a comparable for Montgomery County and that teachers in Baltimore City are clearly not comparable because they do not perform jobs which are comparable to MCGEO classifications.

The Union further argues that its LBFO is more reasonable because it better serves the interest and welfare of the public and the County's LBFO seeks to change the *status quo* between the Parties, without any evidence that it will save the County any money or that it will be in the best interest of the public. It maintains that, as testified to by Mr. Renne, it takes seriously its responsibility to preserve services to the community and that preserving services requires that the people who perform those services be retained in the County's employ to the extent possible. (Tr. 38) It contends that it is only fair to exhaust other alternatives before laying off County employees.

MC GEO further argues that the County failed to demonstrate that its LBFO was the "most reasonable" of the two proposals. It asserts that the County's entire case reduces to a claim that, because it now faces a large budget deficit, it therefore should be given *carte blanche* to deal with layoffs based on its asserted management prerogatives and without regard to the procedures the Parties have lived with for almost 20 years. The Union maintains that the County did not (and could not) make any link between the reductions of the County deficit and the procedures (as opposed to the fact of layoffs themselves) for implementing RIFs and, even on its own terms, the County did not show that its proposal was the "most reasonable" of the two LBFOs.

Local 1994 argues, still further that the only question before me is which of the two LBFOs is the "most reasonable" regarding RIFs and maintains, in answer, that its offer is overwhelmingly the most reasonable because it is rooted in the current and past bargaining agreements, is comparable to RIF policies in nearby and comparable jurisdictions and promotes the public interest and welfare. It contends that the County failed to show that its LBFO achieves any, let alone all, of these statutorily mandated factors.

The Union further argues that its LBFO is merely a strengthened version of the provisions of Article 27 of the current agreement, which incorporates by reference AP 4-19. It points out

that these procedures have been in effect for almost 20 years and that Mr. Adler acknowledged that these policies are applicable to all RIFs and have been applied in the past. (Tr. 103) MCGEO asserts that its LBFO simply incorporates certain mandates of AP 4-19 more directly into the language of the agreement and strengthens the procedures, with some modifications.

The County argues that its RIF proposal, as stated in its LBFO, should be adopted and the Union's proposal rejected. It contends that the impasse procedure is governed by the *Montgomery County Code*, Article VII, §§ 33-101-112. It maintains that, once binding arbitration is invoked, the Impasse Neutral must require each party to submit an LBFO pursuant to § 33-108(f)(3) and must select the "more reasonable" package as a whole without alteration based on the statutory requirements of § 33-108(f)(4).

Montgomery County further argues that the LBFOs that the Parties exchanged on February 23, 2010, should form the basis for the comparison to determine the "more reasonable" package. It contends that the Union should not have been permitted to submit an amended LBFO on February 27, 2010. It maintains that the term "final offer" needs to have meaning and that it clearly refers to the offers which were exchanged by the Parties on February 23, 2010.

The County further argues that there can be no dispute that the national economy has been in the deepest recession since the Great Depression and that the County faces an unprecedented budget crisis in FY 2011. It asserts that the County faces a budget gap of \$761 million for FY 2010 (Co. Ex. 11) and that the revenue situation in is not likely to improve in FY 2011. It maintains that, as Mr. Beach explained during the FOP arbitration, the County currently plans to eliminate a significant number of County jobs out of economic necessity. (Co. Ex. 7, pp. 89-91) The County points out that Mr. Renne acknowledged that significant layoffs would be necessary for the first time in the County's history. (Tr. 254)

Montgomery County further argues that RIFs are governed by Article 27 of the Agreement between the Parties and AP 4-19, as incorporated by reference into the Agreement. It points out that Article 27 was negotiated in 1991 and contends that there is no evidence to suggest that the County's RIF policy has been problematic since that time. (Tr. 24-25) Although it acknowledges that RIFs mandated by a lack of funds are the subject of the instant proceeding, it asserts that RIFs may also result from programmatic and other practical concerns. (J. Ex. 1, Article 27, Section 1; TR. 161-62) Montgomery County maintains that a RIF is never its first option (Tr. 167) and that the current policy provides a number of safeguards and protections that are exhausted before a RIF is finally implemented, including freezing vacancies in the affected department (Tr. 169-70), offering Discontinued Service Retirements (Tr. 168), reducing training and travel expenses (Tr. 187) and giving merit system employees in an affected department priority over probationary, temporary and seasonal employees in the same status and class. (Tr. 173) Although the County acknowledges that Section 2.0 of AP 4-19 requires that it "exhaust" alternative measures prior to implementing a RIF, it contends that it is the County's management right to determine which alternatives are viable options. (Tr. 153)

The County further argues, despite the fact that there is no evidence that the current County RIF process is unconventional, unreasonable, unfair or ineffective, that it has already agreed to enhance its current RIF process. It points out, for instance, that it has agreed to the Union's request that protection for a merit employee - as related to probationary, temporary and seasonal employees - be expanded beyond the departmental level and extend to the employee's entire occupational series, that it has clarified its Discontinued Service Retirement requirements and made a substantial commitment to fund a Retirement Incentive Program ("RIP"). The County asserts that the Union's RIF proposal, on the other hand, seeks to paralyze the RIF process by setting roadblocks throughout the process. It maintains that the Union's LBFO contains several terms that improperly infringe upon its right to implement the RIF policy and that Mr. Renne even testified that the

Union's LBFO was *designed to prevent RIFs* in the County. (Tr. 252) The County contends, in addition, that the Union seeks to go beyond the FY 2011 crisis, as its RIF proposal - in contrast to the Union - has no sunset provision. (Tr. 253-54)

The County further argues that the Union's proposal is unreasonable in the light of the relevant statutory factors. It asserts that two of the factors - © and (D) comparisons to other County employees and to employees of private employers - are not relevant in determining the most reasonable proposal package. It maintains that the remaining four factors all weigh in favor of accepting the County's LBFO. It contends that, with respect to factor (A) (the bargaining history between the Parties), the current RIF policy has been employed without modification since 1991. It contends that it has proposed manageable enhancements - including expansion of protections to merit employees as they relate to probationary, temporary and seasonal employees, clarification to the application of its Discontinued Service Retirement policy and negotiation of a RIP - that all show its strong commitment to the employees who will be adversely affected by the tough decisions that will come in FY 2011. to a policy that has worked well over many years. The County contends that the Union's LBFO is designed to disrupt and cripple the system that has been in place and served the Parties well for almost 20 years.

The County further argues that factor (B) (comparability data) weighs in its favor. It maintains that RIFs are performed on a departmental basis in both Baltimore City and Baltimore County. (Co. Ex. 14) It contends that the Union's LBFO would dramatically alter the current RIF policy by requiring the County to implement RIFs by seniority across departments in an entire occupational series. (Tr. 113) Additionally, the County renews its objection to the Union's comparability data, contending that the policies are pulled from manuals and collective bargaining agreements without any context and without witnesses familiar with them to be available for cross-examination. It asserts, with respect to M-NCPPC, that a RIF is clearly performed, consistent with the

County's current and proposed process and inconsistent with the Union's LBFO, by a department head and remains isolated by department throughout the process. The County points out that, while the department head at M-NCPPC is required to consider a number of options before imposing a RIF, management discretion is also protected, since the M-NCPPC policy retains management's discretion to employ all or none of the considered options.³

The County further argues that the HOC RIF procedure (U. Ex. 4, p. 52) contains a policy statement that mirrors AR 4-19, Section 2.0 and that, unlike the Union's LBFO, the HOC does not require that a list of mandatory prerequisites be exhausted prior to each and every RIF and recognizes a distinction between full-time and part-time employees. It maintains that neither the Howard County nor the Prince George's County RIF procedures support the Union's RIF proposal. With respect to the former, the County contends that RIFs are implemented based upon a formula that calculates retention points that are heavily influenced by performance evaluations (U. Ex. 5, pp. 91-92) and that Montgomery County's seniority-based system is not analogous. With respect to the latter, it asserts that layoffs are non-negotiable and, in any case, there is no indication that RIFs extend beyond the department level. (U. Ex. 6) Finally, the County maintains that the District of Columbia RIF process is based upon the federal system and it is not clear how it is relevant to Montgomery County's or the Union's RIF proposals. (U. Ex. 7)

The County further argues that, with respect to factor (E) (interest and welfare of the public), the Union contends that the public interest is served by a purely seniority-driven RIF system that promotes the retention of employees who, by the Union's definition, have the most skill, expertise and institutional knowledge. (Tr. 64) It contends that the retention of more senior employees does not necessarily lead to the retention of the more skilled and expert employees. (Tr. 192) It asserts that the public

³"The selection of one or more options is dependent upon the reason(s) the Department Head is contemplating a reduction-in-force." (U. Ex. 3, p. 94)

interest is best protected by permitting the County to exercise its reserved management rights through the effective application of the RIF policy, not by the Union LBFO's concentration on seniority alone.

Finally, with respect to factor (F) (ability of the employer to finance economic adjustments and their effect on public services), the County argues that the Union's LBFO will make it very difficult, if not impossible, for it to finance economic adjustments through implementation of the RIF policy. It acknowledges that both LBFOs extend protection against a RIF to merit employees vis-à-vis probationary, temporary and seasonal employees across County departments (rather than limiting it to within department) but points out that the first paragraph of the Union's LBFO ignores the employee's "status," i.e., does not distinguish between part-time and full-time employees, and does not provide for the consideration of minimum qualifications when a merit employee bumps a probationary, temporary or seasonal employee. It maintains that the former leads to inequitable treatment of part-time and full-time employees and the latter fails to assure that the retained employee possesses the minimum qualifications to perform the job into which he/she would move.

The County further argues that the second paragraph of the Union's LBFO enumerates mandatory prerequisites that must be exhausted prior to implementation of a RIF and that do not have an expiration date. It contends, in addition, that, unlike the current RIF policy, which is administered at the department level, the Union's proposal would apply across the County. The County asserts that the Union requires a County-wide hiring freeze (without exceptions for public safety or health and welfare) and ignores the possibility that a RIF might be implemented for reasons other than financial reasons, such as program eliminations, technological improvements, etc. Similarly, the County objects to the Union's proposal to eliminate all bargaining unit positions that have been vacant for at least six months because it fails to take into account any exceptions or positions that have proved to

be difficult to fill. It maintains that the Union's LBFO would require the agreed to FY 2011 RIP in every subsequent budget year before employing a RIF. The County contends that the Union's proposal to reduce or suspend expenditures for training or travel - already employed throughout the County on a limited basis - is impractical since many employees are required, for instance, to maintain certification or to travel and incur reimbursable expenses.

The County further argues that the Union's LBFO would require the administration of furloughs across the County prior to the use of a RIF. Although it acknowledges that furloughs will likely be used as part of the budget reduction process, it asserts that the reduction of scheduled work hours is a complicated and delicate process that results in across-the-board reductions in pay and a potentially serious disruption in services to the public. It points out, in addition, that furloughs provide only short-term financial relief and do not deal with the structural nature of the County's budget imbalance as a RIF will.

The County further argues that the Union's LBFO would require the County to base the order of RIFs across departments throughout the occupational series rather than within the department. It maintains that, if a single RIF in a single department were required, such an expansion would require the County to set in motion a domino-like process of bumping across the 33 County departments, 16 job series and 39 job classifications. (Tr. 190)

The County further argues that the Union's proposal for exceptions flips the burden of proof onto the County if there is a challenge to its use of the RIF procedure. (Tr. 128). It contends that the Union proposes to change existing policy by placing the burden of establishing operational need onto the County, thereby violating the management rights of the County and potentially slowing down the RIF process with innumerable challenges.

Finally, the County argues that the Union's proposed change to Article 41's RIP program - requiring that "any savings" realized

from the use of the RIP be used exclusively for the purpose of avoiding layoffs - defeats the purpose of the RIP program. It asserts that the RIP costs the County money and that the outlay of money is in return for the abolishment of the position at issue. It maintains that if the money used to fund the RIP has to go back into the re-establishment of a job, the Union's proposal would amount to a RIP program that was self-defeating. (Tr. 235-36)

DISCUSSION, ANALYSIS AND CONCLUSIONS

General Matters

The interest arbitration process provides resolution of bargaining disputes when the parties are unable to reach agreement through bargaining. It is, therefore, an extension of the bargaining process and the results are intended to approximate the result the bargaining process would have produced had it been successful, but without the adverse consequences to the public interest which lack of agreement, labor strife or unilateral action might produce.

Montgomery County Code § 33-108(f)(3) provides that the mediator/arbitrator

must select, as a whole, the more reasonable of the final offers submitted by the parties. The mediator/arbitrator must not compromise or alter a final offer. The mediator/arbitrator must not consider or receive any argument or evidence related to the history of collective bargaining in the immediate dispute, including any previous settlement offer not contained in the final offers. However, the mediator/arbitrator must consider all previously agreed-on items, integrated with the disputed items, to decide which offer is the most reasonable.

I take note that this provision states the basis upon which a final offer shall be selected, at the beginning referring to the "more reasonable" final offer and at the end referring to the "most reasonable" final offer. I conclude, however, that, since there

are only two final offers, there is no practical effect to this discrepancy and that they may be used interchangeably without effect.

Frequently, the legislatures which impose interest arbitration processes frequently direct arbitrators as to the standards they are to use. In this instance, *Montgomery County Code* § 33-108(f)(4) delineates the factors that I may consider:

(A) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

(B) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland.

© Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

(D) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

(E) The interest and welfare of the public.

(F) The ability of the employer to finance economic adjustments, and the effect of the adjustments on the normal standards of public services provided by the employer.

This provision does not require that any particular factor be considered or that all of them be considered. It simply identifies the factors that I may consider. Thus, I am free to determine whether any particular factor or factors weigh more heavily than others (within the confines of § 33-108(f)(3) *supra*).

The County acknowledges that AP 4-19, which is specifically incorporated into Article 27 of the Parties' Agreement, requires

that it "exhaust" certain alternative measures prior to implementing a RIF. Section 2.0 states:

The conditions which may give rise to a reduction-in-force can sometimes be addressed through other means (e.g., effective position management and employee placement, reduced working hours, restructuring positions and retraining incumbents, administrative retirement, etc.). These alternatives are to be exhausted before reduction-in-force is instituted.

I note, however, that this section of the AP is modified by subsequent, more specific sections. For instance, Section 2.1 provides that a RIF "is to be accomplished in a way which will reduce adverse impact on employees to the greatest extent which is reasonable under the circumstances." This section implies that not every alternative is appropriate in every case and that what is "reasonable under the circumstances" must be taken into account. In addition, Section 2.2 provides that "every effort will be made to maintain or restore, but not to improve, the employment status of affected employees." Thus, a proposal that permits a part-time employee to fill a full-time position - thus "improving" his or her status - runs counter to Section 2.2.

Finally, AP Section 2.3 provides that the "[a]uthority to administer this procedure is delegated to the Personnel Director by the Chief Administrative Officer." This section, read together with Article 2 (Management Rights) of the Agreement, grants the County a certain amount of latitude in determining the services to be rendered by the County and the operations to be performed for its residents and, therefore, whether RIFs should be imposed County-wide or only on certain agencies and/or departments. It does not, as the Union would have me conclude, give the County *carte blanche* to deal with layoffs without regard to the procedures the Parties have lived with for almost 20 years.

The County points to the importance of avoiding threats to its budget and the maintenance of service, and those are certainly important considerations in bargaining. The Parties do not dispute

that the nation, and the Washington Metropolitan Area in particular, including Montgomery County, are suffering through an almost unprecedented economic downturn, perhaps the worst in 70 years. However, there are numerous other public interests to be protected, as well, including the maintenance of a stable workforce to provide reliable, quality service and the maintenance of integrity of bargaining agreements and ensure the fair treatment of employees. Ordinarily, collective bargaining will produce such results, taking into account the welfare of the public. As indicated, the interest arbitration process is an extension of that bargaining process. In the end, the objective is to place the Parties where they would reasonably be if their bargaining had been successful.

As to the County's continuing objection to my decision to permit the Union to submit an amended LBFO for consideration in the instant proceeding, I am not persuaded. After the Parties exchanged LBFOs on February 23, 2010, they continued to engage in conversations, *i.e.*, negotiations, in an unsuccessful attempt to resolve the remaining issues. Although the County contends that enabling the Union to amend its LBFO is "inconsistent with the intent and purpose of the statute, which is of course to motivate the parties to reach agreement and not have to resort to the binding arbitration process as a means of resolving collective bargaining agreements between the parties" (Tr. 9), I conclude just the opposite. The purpose of the statute is, indeed, to motivate the parties to reach agreement without having to resort to the binding arbitration process. The Parties continued negotiations subsequent to their exchange of LBFOs precisely for that purpose. To force either Party to defend a proposal that subsequent conversations convinced them to change would contradict the statutory goal of resolving issues. As to any claim that *enabling* one party to amend its LBFO is somehow "unfair" to the other, I note that I gave the County a similar opportunity to amend its LBFO. Any potential unfairness was thus avoided.

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

The LBFOs

The current RIF language contained in Article 27 of the Agreement, including AP 4-19 which is incorporated by Article 27, has been in effect for almost 20 years. The Parties contend that the RIF process has worked successfully for all of that time. The current fiscal crisis has raised the unprecedented and alarming specter not only of significant numbers of employee RIFs throughout the County but also of employee layoffs. I am persuaded that, through their collective bargaining relationship and from their respective points of view, both Parties are seeking ways to protect further the rights of County employees so as to minimize the impact of these RIFs.

There is no dispute between the Parties that the various alternatives to a RIF specifically listed in the Union's LBFO are neither new concepts nor, on an individual basis, onerous to implement. The County is already implementing a hiring freeze (although one could reasonably conclude, even assuming public safety and health and welfare exceptions, that it is somewhat porous [U. Ex. 8]). Additionally, the County has clarified its Discontinued Service Retirement requirements and made a substantial commitment to fund a RIP. The current policy requires that the County freeze vacancies in a department that is proposed for a RIF and, on a limited basis, the County has reduced or suspended expenditures for training or travel.

Moreover, Article 27 currently prohibits a bargaining unit employee from being laid off if there is a probationary or temporary employee in the same class in the same department/office/agency. The County's LBFO proposes to expand this protection by applying it to probationary, temporary and seasonal employees in the same occupational series and status,

provided the employee to be laid off meets the minimum qualifications of the position to which he/she would be transferred. Therefore, I conclude that, conceptually, the County has little objection to any of the described alternatives to a RIF.

The County, however, does object to some of the specifics as the alternatives are drafted by the Union and contained in its LBFO. It objects, for instance, to the fact that the Union LBFO enumerates no exceptions to a County-wide hiring freeze for public safety or health and welfare. Similarly, it objects to being required by the LBFO to eliminate any position vacant for more than six months without exceptions for public safety or health and welfare. Although it has agreed to an FY 2011 RIP, it objects to a requirement that the RIP be available in subsequent years. Each of these objections are reasonable.

The County's primary objection, however, is that all of these alternatives constitute mandatory prerequisites for a RIF. Thus, if the Union's LBFO were adopted, the County would be prohibited from implementing a RIF until each of these individually reasonable alternatives was exhausted. I am persuaded that this would not always be practicable, particularly in the case of furloughs. In a jurisdiction as large as Montgomery County, implementation of furloughs will be a complicated process. The County cannot simply shut down for a week or two (or more). In order to maintain necessary services, the County will need to spread the furlough days required from affected employees across a longer period of time, perhaps, even, a full fiscal year. To do otherwise would have a devastating impact on required services. The Union LBFO's requirement that furloughs be implemented before a RIF can commence would, in practice, negate the County's ability to implement a RIF. Indeed, Union President Renne admitted the avoidance of a RIF is a purpose of its LBFO. Tr. 252

In any case, I do not presume that the County will decide to implement furloughs, either County-wide or on a departmental basis, unless and until larger, longer-term measures have been taken and

additional short-term savings are required. I am persuaded by Mr. Beach's testimony that, as a budgetary tool, furloughs provide only such short-term financial relief and, given the imbedded structural nature of the County's budget imbalance, will do little to remedy the County's fiscal problems. Thus, the Union's LBFO would force the County to implement an alternative that will do little, if anything, to resolve long-term issues. The Union's RIP proposal - requiring that "any savings" realized from the use of the RIP be used exclusively for the purpose of avoiding layoffs - is similarly contradictory. If the money used to fund the RIP has to go back into the re-establishment of a job, the Union's proposal would amount to a RIP program that was self-defeating.

The Union contends that its LBFO is the most reasonable because it "is consistent with, and but a small variation from," County practice over the last 20 years. (Post-Hearing Brief, p. 9) I am not persuaded. Although all of the listed alternatives are arrows in the County's proverbial quiver, they have never been mandatory prerequisites to the imposition of a RIF. Indeed, in sound management, some measures may appropriately be undertaken alongside RIFs and some - such as furloughs - after RIFs. Additionally, the Union eradicates the distinction between part-time and full-time status and does not require that the retained employee possess the minimum qualifications to perform the job into which he/she would move. In addition, the Union alters the order of RIF, opening the seniority concept across departments throughout the occupational series.

The Union also contends that its LBFO is the most reasonable because other Montgomery County employers - in particular, HOC and M-NCPPC - have policies and collective bargaining agreements such as the one embodied in MCGEO's LBFO. That is not so: In both cases, the Union's claims are overstated and these agencies do not embody the LBFO before me. For instance, the HOC RIF procedure contains a policy statement that mirrors AR 4-19, Section 2.0. This statement does not require that a list of mandatory prerequisites be exhausted prior to each and every RIF any more than AR 4-19 does

now for County employees. I also note that HOC's policy recognizes a distinction between full-time and part-time employees, which the Union LBFO does not. Similarly, with respect to M-NCPPC, a RIF is implemented at the department level (not agency-wide) and, contrary to the Union's contention, a department head who is contemplating a RIF is only required to consider a number of options before imposing a RIF. The statement contained in Section 2220 - "The selection of one or more options is dependent upon the reason(s) the Department Head is contemplating a reduction-in-force" - clearly indicates that implementing all of these options is not anticipated or required. Thus, the M-NCPPC policy retains management's discretion to implement all or none of the options that are considered.

The Union's non-Montgomery County comparables are similarly unpersuasive: Howard County's formula is heavily influenced by performance evaluations, Prince George's County's layoffs are non-negotiable and, in any case, do not extend beyond the department level. The District of Columbia RIF process is based on the federal system and the Union provided no testimony indicating precisely what relevance its provisions have to the instant case.

The Union's LBFO provides exceptions that would enable the County not to lay off an employee who possesses unique skills and qualifications and not to implement a particular alternative. They provide the Union with the right to grieve and challenge the County's use of these exceptions. The Union contends that these exceptions provide the County with any flexibility it needs. I am not persuaded. In fact, the Union's ability to grieve and justify its use of exceptions would further restrict its ability to respond to the fiscal crisis. It would be time-consuming and only cause further delay in implementing the necessary spending reductions. If the Union were today permitted to file grievances concerning the current hiring freeze, the result would make orderly effectuation of budget deficit reduction slow and difficult.

Conclusion

While both Parties have stated that they wish to keep RIFs to a minimum, the depth of the County's fiscal problem and the evolving economic circumstances require flexibility in the use, timing and sequencing of all available tools. The Union asserts that, through its LBFO, it seeks to guarantee that jobs, and the services to the public those jobs represent, are preserved by requiring that the County take certain basic steps prior to, and in the course of, implementing any potential RIF. These goals are appropriate Union objectives, and I have no doubt that the Union is, in fact, seeking them. However, Mr. Renne also revealed the Union's further objective when he stated, in response to a question from Union Counsel, that the Union's "exact intent" in making its LBFO proposal was "to, in some way, prevent the County from making the reductions in force." (Tr. 252) I commend Mr. Renne for his candor. However, given the dire financial condition of the County, such action will likely be necessary. The LBFO adopted must allow for that necessity. The Union's LBFO, requiring that all alternatives be exhausted prior to implementing a RIF, is too restrictive and impractical.

I am convinced that the welfare of the public requires that the County have in place a set of procedures which will allow budget savings through flexible application of the procedures set forth in AP 4-19, including, as a last resort, RIFs. The County's initiatives must be undertaken in a way which preserves needed programs to the maximum extent and does the least injury to County employees. The County's LBFO better achieves that balance. The Award so reflects.

A W A R D

The County's proposal with respect to Article 27 - Reduction-in-Force is awarded and made a part of the 2010-2011 Agreement. The Union's proposal with respect to Article 27 - Reduction-in-Force and Article 41 - Retirement is not awarded.

All of the provisions of the expiring agreement which are not included in the list of items in dispute were tentatively agreed to, either on the basis of the language from the 2007-2010 Agreement (if neither Party offered proposals to change them) or on the basis of agreement reached during negotiations, including informal negotiations which took place during the mediation/interest arbitration process are also awarded and made a part of the terms of the 2010-2011 Agreement.

Dated this 22nd day of March, 2010, at Clarksville, Maryland

/s/ M. David Vaughn

M. David Vaughn
Arbitrator



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850


Isiah Leggett
County Executive

MEMORANDUM

April 14, 2010

055930

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 the recent collective bargaining discussions between the Montgomery County Government and the Fraternal Order of Police Montgomery County Lodge 35, Inc (FOP). The agreement is the product of an Interest Arbitration Decision by arbitrator Herbert Fishgold in favor of the FOP. A copy of the Opinion and Award is attached. 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.

Article 57 of the agreement, providing for the County Executive to appoint a representative of the FOP to serve indefinitely on the Board of Investment Trustees, requires a change in the County Code. Legislation to accomplish this change will be forwarded to the Council later this week.

Attachments

IL: sw

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2010 APR 14 PM 4:24

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

The Montgomery County Government (Employer) and the Fraternal Order of Police, Lodge 35 (Union), agree that their collective bargaining agreement effective July 1, 2007, through June 30, 2010, is extended in full force and effect for the one-year term July 1, 2010, through June 30, 2011, subject to the amendments shown on the following pages

Please use the key below when reading this regulation:

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing regulation by proposed regulation.</i>
[Single boldface brackets]	<i>Deleted from existing regulation by proposed regulation.</i>

The parties agree to amend the contract as follows:

* * *

Article 5 Tech Pay

* * *

Section C. Multilingual Pay Differential.

1. *Skill Levels.* The Parties agree to establish a pay differential for officers whose job requires the occasional use of multilingual skills or signing. Affected officers will be afforded an opportunity to qualify for the multilingual pay differential.

Basic Skills. Basic skills are defined as those skills primarily required for signing or oral communication and comprehension such as those used in conversation with clients and citizens.

Advanced Multilingual Skills. Advanced skills are defined as those skills required for written communication and comprehension in a second language, in addition to skills in oral communication and comprehension.

Expert Multilingual Skills For Interrogations and Investigations. Mastery of both basic and advanced skills necessary for comprehensive use in interrogations, investigations and legal proceedings.

Test Administrators: Employees who are selected by the County to administer basic skills and advanced multilingual skills performance examinations.

* * *

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

interrogations and investigations will receive three dollars per hour for all hours actually worked.

Certified officers will indicate on their time sheets the multilingual skill code ML1 for Basic Skill certification, [and] ML2 for Advanced Skill certification, and ML3 for Expert skill for interrogations and investigations.

* * *

Article 17 Disability Leave and Injury on the Job

* * *

Section E. Claim Form. Whenever an injury on the job is reported, [*Employee Claim Form*, WCC Form C1, Appendix E (or its successor)] a copy of this section shall be attached to the departmental form ([presently] currently the Supervisor's Incident Investigation Report form), and then provided to the employee. Employees are not required to sign or attest to the SIIR form (or its successor).

Notice to Injured Employee

A report of injury to your supervisor or the Employer is not a claim for Workers' Compensation benefits or notice of injury to the Workers' Compensation Commission. The Workers' Compensation claim form, "WCC Form C-1" is required in order to submit your claim to the Commission and may be found at the Maryland Workers' Compensation Commission Website http://www.wcc.state.md.us/WFMS/C1_WebForms.html Please carefully follow all instructions provided on that site.

* * *

Article 19 Sick Leave

Section A. Definition. Sick leave is earned, paid leave granted to eligible employees for periods of absence because of personal illness, injury, medical quarantine, medical, dental or optical examinations and treatments, or any temporary disability caused or contributed to by pregnancy, miscarriage or childbirth. An employee may also use sick leave for an illness, injury, medical quarantine, medical, dental or optical examinations and treatments in the immediate family, including a domestic partner, or for the purpose of attending to the immediate family at the time of birth or adoption of a child, provided the time used is not for a period more than the amount of sick leave earned in any calendar year. This amount of sick leave limitation does not apply to sick leave taken pursuant to Article 16 *Parental Leave* of this Agreement.

* * *

Article 21 Compensatory Time

Section A. Limitations on Accrual of Compensatory Time. A bargaining unit employee who has a compensatory time balance in excess of 80 hours at the end of the leave 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. During Fiscal Year 2011, the County at its option may limit the cash out of excess

hours to employees with a compensatory leave balance in excess of 120 hours at the end of the leave year. The carry-over of excess compensatory time must be reduced by no later than December 31 of the succeeding leave year. Unused compensatory time granted to implement a furlough shall be added to the member's compensatory leave balance at the end of the furlough period and treated as above.

* * *

Article 24 Insurance Coverage and Premiums

* * *

Section T. Life Insurance

* * *

2. Term Life Insurance. In the event of a bargaining unit employee's death in the line of duty, the designated beneficiary, beneficiaries or estate must receive the following lump sum payments:
 - a. Immediate advance payment of \$25,000 from the basic term life benefit toward funeral and family living expenses.
 - b. The basic benefit of term life and accidental death and dismemberment insurance payable for a bargaining unit member whose death is the direct result of an accidental bodily injury sustained in the performance of County employment will be \$500,000, or the amount payable under the schedule of such benefits in effect under current practice, whichever is greater, less any advance paid under subsection 2.a.

* * *

Article 36 Wages

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

[Effective the first full pay period following July 1, 2008, each unit member shall receive a wage increase of four (4) percent. Effective the first full pay period following July 1, 2009, each unit member shall receive a wage increase of four and one-quarter (4.25) percent.] The four and one-quarter (4.25) percent wage increase scheduled to take effect in the first full pay period following July 1, 2009 shall be postponed, and shall not be effective during fiscal year 2010 and 2011. Salary-based

benefits shall not be diminished as a result of the postponement, and such benefits will be calculated as if the postponed wage increase had been received as scheduled.

* * *

Section F. Lateral Entry

* * *

Effective Date. [This section became effective [on] April 11, 1999 and expires on June 30, 2001, unless in its sole discretion, the Employer extends it.] Notwithstanding the provisions of Section F, for employees hired during Fiscal Year 2011, the County at its option may suspend in Fiscal Year 2011 only, the requirement that within-grade advancement will be based on one additional 3.5 percent step for each year of qualifying experience.

* * *

Article 47 Duration of Contract

This agreement shall become effective on July 1, [2007] 2009, and terminate on June 30, [2010] 2011.

* * *

Article 57 Retirement

* * *

Provide that, subject to County Council confirmation, the county executive must appoint to the Board of Investment Trustees one voting representative designated by the employee organization certified pursuant to County Code Chapter 33, Article V. This designee must serve indefinitely while remaining the designee of the certified employee representative.

This provision replaces the existing provision providing for a police bargaining unit representative to the Board of Investment Trustees.

The existing restriction on voting in matters involving the County's deferred compensation plan shall remain in effect.

* * *

Article 59 FMLA

Section A. Integration of Contract Benefits and Conditions with Family Medical Leave Act. The parties agree that FMLA benefits and benefits provided by this Agreement will be integrated in accordance with the following principles:

* * *

5. For purposes of this Article, an eligible domestic partner shall be considered the same as a spouse.

* * *

Section B. Definitions

* * *

2. *Eligible Employee.* An eligible employee is an employee who has been employed by the county for a total of twelve (12) months and who has been in a work status for at least 1040 hours in the preceding twelve (12) months. An eligible employee must be allowed to use twelve (12) workweeks per leave year or any combination of annual leave, sick leave, disability leave, parental leave, and leave without pay for any one or more of the following reasons:

* * *

- c. To care for, or arrange care for, any of the following with a serious health condition: The employee's spouse, domestic partner, minor child, adult child incapable of self care, or parent;

* * *

Section C. Integration Provisions

* * *

- c. FMLA leave taken for medical purposes to care for, or arrange care for, a serious health condition of the employee's spouse, domestic partner, minor child, adult child incapable of self care, or parent or because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's position:

* * *

Article 69 Flight Officers

Section A. Compensation. Unit members assigned to the Aviation Unit or who perform as pilots, co-pilots, flight officer or observer duties aboard aircraft owned, operated or funded by, or under the control of the County or any County agency, shall be compensated as provided in this Article.

1. All compensation and benefits as provided under this agreement, and
2. A pay differential for all hours worked regardless of flight status:
 - a. Pilot and Co-Pilot - \$3500 per year.
 - b. Observers and Flight Officers - \$1500 per year.

Section B. Benefits. Unit members, regardless of assignment, who die as a result of or in connection with an incident involving any aircraft owned, operated or funded by, or under the control of the County or any County agency, shall not be excluded from, or their beneficiaries or estate denied any County provided benefit or insurance payment from the term life insurance benefits provided at the County's expense.

Section C. Impact of flight differentials on other Compensation and Benefits. For purposes of pay and benefits, the differentials created by this Article shall be treated as other differentials under this Agreement; however, these differentials shall be factored into overtime only for use of the skill during hours worked in excess of the regular workday or workweek.

Section D. Limitations. The terms and conditions of this Article shall become effective upon the parties reaching a final agreement on all other aviation unit mandatory subjects of bargaining and the initiation of flight operations by the unit.

**MEMORANDUM OF AGREEMENT
BETWEEN
THE MONTGOMERY COUNTY GOVERNMENT
AND
FRATERNAL ORDER OF POLICE
MONTGOMERY COUNTY LODGE 35, INC.**

As a result of the arbitration award for the re-opener negotiations as set forth in Article 31(F) of the collective bargaining agreement, the parties amend the collective bargaining agreement as follows:

Article 5. Tech Pay

* * *

Section C. Multilingual Pay Differential.

1. ***Skill Levels.*** The Parties agree to establish a pay differential for officers whose job requires the occasional use of multilingual skills or signing. Affected officers will be afforded an opportunity to qualify for the multilingual pay differential. Basic Skills.

Basic skills. are defined as those skills primarily required for signing or oral communication and comprehension such as those used in conversation with clients and citizens.

Advanced Multilingual Skills. Advanced skills are defined as those skills required for written communication and comprehension in a second language, in addition to skills in oral communication and comprehension.

Expert Multilingual Skills For Interrogations and Investigations. Mastery of both basic and advanced skills necessary for comprehensive use in interrogations, investigations and legal proceedings.

Test Administrators: Employees who are selected by the County to administer basic skills and advanced multilingual skills performance examinations.

* * *

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

Certified officers will indicate on their time sheets the multilingual skill code ML1 for Basic Skill certification, and ML2 for Advanced Skill certification and ML3 for Advanced skill for interrogations and investigations.

* * *

Article 17 Disability Leave and Injury on the Job

* * *

Section E. Claim Form. ~~Whenever an injury on the job is reported, Employee Claim Form, WCC Form C1, Appendix E (or its successor) shall be attached to the departmental form (presently the Supervisors Incident Investigation Report form), and provided to the employee. Employees are not required to sign or attest to the SIIR form (or its successor).~~ Whenever an injury on the job is reported, a copy of this section shall be attached to the departmental form (currently the Supervisor's Incident Investigation Form), and then provided to the employee. Employees are not required to sign or attest to the SIIR form (or its successor).

Notice to Injured Employee

A report of injury to your supervisor or the Employer is not a claim for Workers' Compensation benefits or notice of injury to the Workers' Compensation Commission. The Workers' Compensation claim form, "WCC Form C-1" is required in order to submit your claim to the Commission and may be found at the Maryland Workers' Compensation Commission Website http://www.wcc.state.md.us/WFMS/C1_WebForms.html Please carefully follow all instructions provided on that site. [Delete Appendix E]

* * *

Article 19 Sick Leave

Section A. Definition. Sick leave is earned, paid leave granted to eligible employees for periods of absence because of personal illness, injury, medical quarantine, medical, dental or optical examinations and treatments, or any temporary disability caused or contributed to by pregnancy, miscarriage or childbirth. An employee may also use sick leave for an illness, injury, medical quarantine, medical, dental or optical examinations and treatments in the immediate family, **including a domestic partner**, or for the purpose of attending to the immediate family at the time of birth or adoption of a child, provided the time used is not for a period more than the amount of sick leave earned in any calendar year. This amount of sick leave limitation does not apply to sick leave taken pursuant to Article 16 *Parental Leave* of this Agreement.

* * *

Article 21 Compensatory Time

Section A. Limitations on Accrual of Compensatory Time. A bargaining unit employee who has a compensatory time balance in excess of 80 hours at the end of the leave 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. **During Fiscal Year 2011, the County at its option may limit the cash out of excess hours to employees with a compensatory leave balance in excess of 120 hours at the end of the leave year.** The carry-over of excess compensatory time must be reduced by no later than December 31 of the succeeding leave year. Unused compensatory time granted to implement a furlough shall be added to the member's compensatory leave balance at the end of the furlough period and treated as above.

* * *

Article 24 Insurance Coverage and Premiums

* * *

Section T. Life Insurance

* * *

2. Term Life Insurance. In the event of a bargaining unit employee's death in the line of duty, the designated beneficiary, beneficiaries or estate must receive the following lump sum payments:

- a. Immediate advance payment of \$25,000 from the basic term life benefit toward funeral and family living expenses.
- b. The basic benefit of term life and accidental death and dismemberment insurance payable for a bargaining unit member whose death is the direct result of an accidental bodily injury sustained in the performance of County employment will be \$500,000, or the amount payable under the schedule of such benefits in effect under current practice, whichever is greater, less any advance paid under subsection 2.a.

* * *

Article 36 Wages

Section A. Wages. Effective July 1, 2007, the salary schedule shall be increased by adding \$3,151 at Step 0, Year 1 with increments and promotions for all other steps and pay grades calculated from the new Step 0, Year 1 basis. Increments and longevity shall continue to be calculated as required by Article 28. The percentage increases upon promotion shall continue (up to the maximum for each rank) to be: 5% between PO I and PO II; 5% PO II and PO III; 5% between PO III and MPO; 10% between MPO and Sergeant; and, subject to Section D, *infra*, 5% between POC and POI. The four and one-quarter (4.25) percent wage increase scheduled to take effect in the first full pay period following July 1, 2009 shall be postponed, and shall not be effective during fiscal years 2010 and 2011. Salary based benefits shall not be diminished as a result of the postponement, and such benefits will be calculated as if the postponed wage increase had been received as scheduled.

* * *

Section F. Lateral Entry

1. **Eligibility.** There is created a lateral entry program that authorizes a within grade appointment salary incentive for those Police Officer Candidate applicants who have eligible prior police/law enforcement experience provided the applicant meets the below listed program criteria. This agreement ensures that all current bargaining unit members who would have qualified for this program will be compensated accordingly.

To be considered for eligibility, existing bargaining unit members must have been employed by the Montgomery County Department of Police no earlier than April 11, 1994, and must have been a salaried employee, within one (1) or more of the following listed categories of public safety/police/law enforcement agencies, excluding Special Police Officers (SPOs), with powers of arrest and the lawful authority to carry a firearm during the course of his/her official duties and employment:

- a. A Federal police/law enforcement agency
- b. A State/U.S. Territory police/law enforcement agency
- c. A County police/law enforcement agency

- d. A City police/law enforcement agency
 - e. A University/college police/law enforcement agency
 - f. A Military police unit/detachment
 - g. A State or County Sheriff's Department [Does not include those employed exclusively within the arena of corrections or detention]
2. *Compensation for Current Bargaining Unit Members.* The formula for providing the special within-grade advancement for eligible bargaining unit members will be based on one additional 3.5 percent step for each year of qualifying experience, up to a maximum of 5 years of qualifying experience (5 steps).
The calculation for the special within grade salary advancement for a current eligible bargaining unit member will be based on the employee's length of eligible prior police/law enforcement experience, his/her actual employment date with the Montgomery County Department of Police, and the effective date of this agreement. Computations for the special salary adjustment for current bargaining unit employees will include the period of April 11, 1994 through April 11, 1999, with April 11, 1999 being the designated effective date of this agreement.
Increment steps to recognize prior qualifying experience will only be awarded in 3.5 percent increments. Partial years of qualifying service will be rounded up or down for purposes of compensation (service) credit.
- The number of annual increment step adjustments received since April 11, 1994 by an eligible bargaining unit employee, will be deducted from the total number of special step adjustments the employee would have received had this program been in effect at the time of his/her appointment.
All salary adjustments are effective April 11, 1999. There will be no retroactive pay or benefit for any period of time or experience prior to the designated program effective date.
- This program does not provide for the lateral transfer of rank, rights, or seniority.
3. *Responsibility for program administration.* The Police Personnel Division will be responsible for the administration of the lateral entry program.
- The Police Personnel Division will identify all current bargaining unit members that have been employed since April 11, 1994, in order to determine eligibility for a special salary adjustment based on qualifying prior police/law enforcement experience.
- The Police Personnel Division will be responsible for computing and submitting all required documentation for the initiation of the special salary adjustment for all eligible bargaining unit members.
- The Police Personnel Division will provide the FOP and all current eligible bargaining unit members with a copy of the compensation tracking form (Form 85A- See Attached) utilized for the compensation calculation.
4. *Effective Date.* ~~This section became effective [on] April 11, 1999 and expires on June 30, 2001, unless in its sole discretion, the Employer extends it.~~
Notwithstanding the provisions of Section F, for employees hired during Fiscal Year 2011, the County at its option may suspend in Fiscal Year 2011 only, the requirement that within-grade advancement will be based on one additional 3.5 percent step for each year of qualifying experience.

* * *

Article 47 Duration of Contract

This agreement shall become effective on July 1, ~~2007~~ 2009, and terminate on June 30, 2011.

* * *

Article 57 Retirement

Provide that, subject to County Council confirmation, the county executive must appoint to the Board of Investment Trustees one voting representative designated by the employee organization certified pursuant to County Code Chapter 33, Article V. This designee must serve indefinitely while remaining the designee of the certified employee representative.

This provision replaces the existing provision providing for a police bargaining unit representative to the Board of Investment Trustees.

The existing restriction on voting in matters involving the County's deferred compensation plan shall remain in effect.

* * *

Article 59 FMLA

Section A. Integration of Contract Benefits and Conditions with Family Medical Leave Act. The parties agree that FMLA benefits and benefits provided by this Agreement will be integrated in accordance with the following principles:

1. The inclusion of Family Medical Leave in the Agreement will not expand or diminish other leave benefits, unless specifically required by FMLA.
2. Paid leave as provided under the Agreement, unless otherwise provided by law, will also count as FMLA leave if the purpose of such leave is within the definition of FMLA leave.
3. When on leave for an FMLA purpose, an employee will not be required to use any paid leave balance before using leave without pay.
4. The County shall provide all benefits mandated by FMLA.
5. **For purposes of this Article, an eligible domestic partner shall be considered the same as a spouse.**

Section B. Definitions.

1. *Family and Medical Leave.* Family and medical leave is paid or unpaid leave granted to eligible employees for the purposes stated in the federal Family and Medical Leave Act of 1993.
2. *Eligible Employee.* An eligible employee is an employee who has been employed by the county for a total of twelve (12) months and who has been in a work status for at least 1040

hours in the preceding twelve (12) months. An eligible employee must be allowed to use twelve (12) workweeks per leave year or any combination of annual leave, sick leave, disability leave, parental leave, and leave without pay for any one or more of the following reasons:

3. To care for the employee's newborn or newly adopted child or to care for a foster child newly placed with the employee;
 - a. To obtain prenatal care for the employee or to arrange for the adoption or foster care placement of a child with the employee;
 - b. To care for, or arrange care for, any of the following with a serious health condition: The employee's spouse, **domestic partner**, minor child, adult child incapable of self care, or parent;
 - c. Because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's position.
4. *Leave year*. The leave year begins with the first full payroll period of a calendar year and ends with the payroll period in which December 31st falls.
5. *Workweek*. For FMLA purposes, a workweek consists of the average number of hours which the employee works in a week.
6. *Restricted Duty*. An employee on disability leave that is designated as FMLA cannot be required to take a restricted duty work assignment until the employee has exhausted all FMLA leave.

Section C. Integration Provisions.

1. Use of FMLA leave.

- a. Leave taken to care for the employee's newborn child or child newly placed for adoption or foster care:
 - (1) Shall be taken within 12 months of the birth, adoption, or foster care placement of the child;
 - (2) May be used on a continuing basis or, with the approval of the employee's supervisor, may be used on an intermittent or reduced workweek basis;
 - (3) At the employee's option, may be paid leave of the appropriate type, or unpaid leave, or any combination of the two;
 - (4) Shall be unpaid leave if the employee has exhausted all appropriate paid leave;
 - (5) Is subject to a 30-day advance notice period;
 - (6) Will not qualify as parental leave under Article 16 *Parental Leave* of this Agreement if the leave is taken to care for a newly placed foster child, or if the employee has exhausted the 720 hours of parental leave provided per 24-month period under Article 16.
- b. FMLA leave which does not qualify as parental leave under Article 16 *Parental Leave* of this Agreement may not include sick leave beyond the limitations stated in Article 19 *Sick Leave §A Definition*.
- c. FMLA leave taken for medical purposes to care for, or arrange care for, a serious health condition of the employee's spouse, **domestic partner**, minor child, adult child incapable of self care, or parent or because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's position:

* * *

Section A. Compensation. Unit members assigned to the Aviation Unit or who perform as pilots, co-pilots, flight officer or observer duties aboard aircraft owned, operated or funded by, or under the control of the County or any County agency, shall be compensated as provided in this Article.

1. All compensation and benefits as provided under this agreement, and
2. A pay differential for all hours worked regardless of flight status:
 - a. Pilot and Co-Pilot - \$3500 per year.
 - b. Observers and Flight Officers - \$1500 per year.

Section B. Benefits. Unit members, regardless of assignment, who die as a result of or in connection with an incident involving any aircraft owned, operated or funded by, or under the control of the County or any County agency, shall not be excluded from, or their beneficiaries or estate denied any County provided benefit or insurance payment from the term life insurance benefits provided at the County's expense.

Section C. Impact of flight differentials on other Compensation and Benefits. For purposes of pay and benefits, the differentials created by this Article shall be treated as other differentials under this Agreement; however, these differentials shall be factored into overtime only for use of the skill during hours worked in excess of the regular workday or workweek.

Section D. Limitations. The terms and conditions of this Article shall become effective upon the parties reaching a final agreement on all other aviation unit mandatory subjects of bargaining and the initiation of flight operations by the unit.

* * *

IN WITNESS WHEREOF, the parties hereto have caused their names to be subscribed hereto by their duly authorized officers and representatives, this ____ day of March, 2010.

Fraternal Order of Police, Lodge 35, Inc.	Montgomery County Government Montgomery County, Maryland
By: <u>Walter E. Bader</u> Walter E. Bader Chief Negotiator <u>Marc B. Zifcak</u> Marc B. Zifcak President	By: <u>Isiah Leggett</u> Isiah Leggett County Executive
<u>[Signature]</u> Approved for Form and Legality County Attorney	

Summary of Proposed Labor Agreement with FOP for FY 2011

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.C/ Multilingual Pay	Add expert skill level for multilingual pay for use in interrogations, investigations and legal proceedings at a pay rate of \$3.00/hour worked	No	Yes	No	Yes	
2.	17.E/ Disability Leave	Removal of Appendix E (Workers' Compensation claim form) to reflect updated changes in Workers' Compensation Commission standards	No	No	No	Yes	
3.	19.A/ Sick Leave	Addition of domestic partners for employee sick leave use	No	No	No	Yes	
4.	21.A/ Compensatory Time	Unit members can cash out compensatory leave with a balance in excess of 120 hours	No	No	No	Yes	
5.	24.T/ Term Life Insurance	Advanced payment of \$25,000 in the event of a line of duty death to employee's beneficiaries to cover funeral and family living expenses Basic benefit will be \$500,000 or amount payable under current practice	No	Yes	No	Yes	
6.	36.A/ Wages	The 4.25% GWA for FY 10 will be postponed and will not be effective in FY 11 No GWA for FY 11	No	No	No	Yes	
7.	36.F/ Wages – Lateral Entry	Employees hired in FY 11 will not receive within grade pay advancement for qualifying experience	No	No	No	Yes	

Summary of Proposed Labor Agreement with FOP for FY 2011

Page 2

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
8.	47/ Term of Agreement	July 1, 2009 – June 30, 2011	No	No	No	Yes	
9.	57/ Retirement	County Executive must appoint one member of the FOP to serve indefinitely on the BIT	No	No	Yes	Yes	
10.	59/ FMLA	Addition of domestic partners for employee use of FMLA	No	No	No	Yes	
11.	69/ Flight Officers	<p>New article for the Aviation Unit</p> <p>Regardless of flight status a pay differential of \$3,500 per year for Pilot and Co-Pilot; a pay differential of \$1,500 for Observers and Flight Officers</p> <p>In the event an employee dies as result of accident with any County owned aircraft, the employee shall not be excluded from any benefits or insurance payments</p> <p>Pay differentials shall be paid as any other differential in contract; shall only be factored into overtime for use of the skill</p> <p>Terms of this agreement will be effective upon conclusion of bargaining and initiation of flight operations</p>	No	No	No	Yes	

In the Matter of Interest Arbitration Between)	
)	
MONTGOMERY COUNTY F.O.P Lodge 35)	
and)	Before Impasse Neutral Herbert
)	Fishgold
MONTGOMERY COUNTY, MARYLAND)	2010 Interest Arbitration
)	

OPINION AND AWARD

In accordance with the Montgomery County Police Labor Relations Act, Chapter 33, Section 33-81 of the Montgomery County Code, when an impasse has been reached in negotiation, the parties are to submit their final offers, and the Impasse Neutral is to select, as a whole, the "more reasonable" of the two final offers.

Following the declaration of impasse in the instant case, the parties submitted their final offers on January 25, 2010. An interest arbitration hearing was held on January 27, 28, and 29, 2010 before the undersigned designated Impasse Neutral. Following the presentation and cross-examination of witnesses and submission of exhibits, the parties agreed upon the filing of post hearing briefs in support of their positions with regard to a limited reopener covering the period July 1, 2010-June 30, 2011. Said briefs were submitted on February 24, 2010, and following review of the entire record, and with the consent of the parties, the undersigned issued an Award on March 3, 2003. What follows herein is the full Opinion setting forth the considerations and reasons for said Award.

A. Montgomery Count Police Labor Relations and Standard of Decision

The Montgomery County Police Labor Relations Law, §§ 33-75 to 33-85 of the Montgomery County Code ("PBL"), provides for binding interest arbitration for all police officers classified as sergeant, master police officer I, master police officer II, police officer I, police officer II, police officer III, or police officer candidate or an equivalent non-supervisory classification, but not a police officer in any higher classification. When the County and the Union are unable to reach an agreement on wages, hours, or terms and conditions of employment by January 20 of any year, an impasse in negotiations is deemed to

exist and the matters are submitted to the Impasse Neutral. PBL § 33-81 (b)(1). Following unsuccessful mediation, the parties are to each provide the Impasse Neutral with their LBFO. PBL § 33-81 (b)(3). A hearing may be held and the Impasse Neutral "shall select, as a whole, the more reasonable, in the impasse neutral's judgment, of the final offers submitted by the parties." PBL § 33-81 (b)(3). The Impasse Neutral is to select the more reasonable package as a whole without alteration. PBL § 33-81 (b)(5)(6).

In determining which party presents the more reasonable proposal, the Impasse Neutral is strictly confined to the consideration of only the following factors:

- a. Past collective bargaining contracts between the parties, including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits and working conditions;
- b. Comparison of wages, hours, benefits and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland;
- c. Comparison of wages, hours, benefits and conditions of employment of other Montgomery County personnel;
- d. Wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County;
- e. The interest and welfare of the public;
- f. The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer.

PBL § 33-81 (5).

B. The Last Best Offers ("LBFO") of the Parties

The parties stipulated that they had reached agreement on a number of terms of the CBA, including agreement on a number of terms of the CBA, including agreement on Article 5, reached during the hearing. By stipulation of the parties those tentatively agreed to articles can be incorporated into this binding Interest Opinion and Award, and are attached as an Appendix thereto.

This leaves for resolution the following articles, which frame the economic dispute at the heart of this proceeding,

County Proposals:

Article 28. Service Increments

Section A. Service Increments

1. A service increment is a 3.5% increase in salary which may be granted annually, upon approval of the chief of police or designee, to each employee having merit status who assumes the duties and responsibilities of their position at an acceptable level of competence as determined through performance evaluation or in accordance with this Agreement and whose work generally meets expectations. Service increments are earned by performance of work at an acceptable level of competence. An employee cannot be awarded a service increment automatically or solely on the basis of length of service.
2. Each employee is eligible to be considered each year for a service increment award to be effective on the assigned increment date with the exception of FY 2011 (July 1, 2010 – June 30, 2011) during which no service increment shall be granted. A service increment may be granted only to the extent that an employee's salary does not exceed the maximum salary for the assigned grade.
3. Effective July 1, 2010, service increments shall not be available to employees for the assumption of the duties and responsibilities of their position during FY 2011 (July 1, 2010 – June 30, 2011).

* * *

Section H. Longevity. Effective July 1, 1999, a longevity step will be added to the pay plan at the beginning of year 21 (after 20 years of completed service) equal to a three and one-half percent increase, however, no employee may initially progress to the L-1 step during FY 2011 (July 1, 2010 – June 30, 2011).

* * *

Section I. If the County government (not to include MCC, HOC, MNCPPC) or MCPS negotiates a collective bargaining agreement on or after January 1, 2010 which permits the granting of service increments during FY 2011 for any of its employee organizations, the prohibitions of the grant of service increments and progression to Step L-1 during FY 2011 set forth in Sections A and H above and Article 36, Section A shall be revoked. The foregoing "me-too" language shall not be triggered if the granting of service increments to and/or the initial attainment of a longevity step by any of the County or MCPS employee organizations for FY 2011 is the result of an arbitration award or court decision/order directing the County government or MCPS to make such service increments available. In the event of such action, the County government and the Union shall reopen bargaining subject to the Police Bargaining Law within 14 business days after the issuance of the award/order for the purpose of negotiating whether service increments and progression to Step L-1 shall be made available to eligible members of the bargaining unit during FY 2011. Bargaining shall be completed within 15 calendar days of its commencement. An impasse over the reopened matter shall be resolved in accordance with Sec.33-81(c).

Article 36. Wages

Section A. Wages. Effective July 1, 2007, the salary schedule shall be increased by adding \$3,151 at Step 0, Year 1 with increments and promotions for all other steps and pay grades calculated from the new Step 0, Year 1 basis. Increments and longevity shall continue to be calculated as required by Article 28; provided, however, that the grant of additional service increments and initial progression to Step L-1 will not be available to employees during FY 2011 (July 1, 2010 – June 30, 2011). The percentage increases upon promotion shall continue (up to the maximum for each rank) to be: 5% between PO I and PO II; 5% PO II and PO III; 5% between PO III and MPO; 10% between MPO and Sergeant; and, subject to Section D, *infra*, 5% between POC and POI. [Appendix T]

Effective the first full pay period following July 1, 2008, each unit member shall receive a wage increase of four (4) percent. Effective the first full pay period following July 1, 2009, each unit member shall receive a wage increase of four and one-quarter (4.25) percent.

The four and one-quarter (4.25) percent wage increase scheduled to take effect in the first full pay period following July 1, 2009 shall be postponed, and shall not be effective during fiscal year 2010 or 2011. Salary-based benefits shall not be diminished as a result of the continued postponement, of the FY 2010 four and one-quarter (4.25) percent wage increase and such benefits will be calculated as if the postponed wage increase had been received as scheduled.

There will be no wage increase scheduled to take effect in the first full pay period following July 1, 2010 or any pay period thereafter for the duration of FY 2011.

Section H. If the County government or MCPS negotiates higher compensation improvements for any of its employee organizations during FY-2010 and employees receive such higher compensation in FY-2010, those higher increases will be matched for bargaining unit employees. Any contract provisions negotiated with the IAFF that achieve a cost saving equivalent to the postponement of a 4% general wage adjustment during FY-2010 will not directly trigger an increase for bargaining unit members. If the County government (not to include MCC, HOC and MNCPPC) or MCPS negotiates a collective bargaining agreement on or after January 1, 2010 which provides an increase in base hourly wage rates during FY 2011 for any of its employee organizations, the preclusion of a wage increase to take effect in FY 2011 set forth in Section A above shall be revoked and the negotiated increase (or the largest thereof in the event of multiple increases) shall be matched for bargaining unit employees. The foregoing "me-too" language shall not apply if the wage increase for another unit of the County or MCPS employees is the result of an arbitration award or court decision/order directing the County to provide the wage increase. In the event of such action, the County government and the Union shall reopen bargaining subject to the Police Bargaining Law within 14 business days after the issuance of the award/order for the purpose of negotiating whether the wage increase awarded/ordered for the other employee organization shall be provided to the members of the bargaining unit. Bargaining shall be completed within 15 calendar days after its commencement. An impasse over the reopened matter shall be resolved in accordance with Sec. 33-81 (c).

Article 39. Tuition Assistance

Section B. Amount and Qualification. The level of tuition assistance for bargaining unit employees will be as follows: \$1,530 effective July 1, 2007, \$1,630 effective July 1, 2008, and \$1,730 effective July 1, 2009. The Tuition Assistance program will be suspended for FY 2011 (July 1, 2010 – June 30, 2011) effective July 1, 2010.

FOP Proposals

- a) Art 36 – Wages. The sentence in Section A referencing the 4.25% wage increase should be modified to read:

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

- b) Art 21 – Compensatory Leave, The first two sentences should be modified to read as follows:

“A bargaining unit employee who has compensatory time balance in excess of 80 hours at the end of the leave 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. During fiscal year 2011, the County at its option may limit the cash out of excess hours to employees with a compensatory leave balance in excess of 120 hours at the end of the leave year.”

- c) Art 36 – Wages – Section F – Add an additional paragraph to read as follows:

“Notwithstanding the provisions of this Section F, for employees hired during the Fiscal Year 2011, the County at its option may suspend in the Fiscal Year 2011 only, the requirement that special with-in grade advancement will be based on one additional 3.5 percent step for each year of qualifying experience.”

- d) Art. 47 – Duration of Contract – should be modified to read:

“This agreement shall become effective July 1, 2009, and terminate on June 30, 2011.”

B. The Context of the Instant Dispute

In order to apply the statutory criteria to the instant dispute, it is necessary to consider the context and circumstances surrounding the limited reopener herein, which entails discussion of the immediate bargaining history thereto, as referenced by factor a.

Prior to March, 2009, the parties had negotiated a three year collective bargaining agreement (CBA) covering the period July 1, 2007 through June 30, 2010. That CBA called for a 4.25% general across the board wage increase effective July 1, 2009. In 2009, the County approached the FOP and asked the FOP to reopen the contract and work with the County to help it address recent economic developments. The FOP voluntarily agreed to defer its scheduled 4.25% general wage increase for one year (FY 2010).

As part of the March, 2009 Memorandum of Understanding regarding this adjustment, the parties created a successor two year CBA covering the period July 1, 2009-June 30, 2011. That successor agreement contained a limited reopener for the second year of the contract:

“Reopener for the 2nd year of the contract in November 2009 on wages, service increments, other pays and differentials, and other benefits to be effective July 1, 2010.”

Although the FOP expected that, entering reopener negotiations, the deferred 4.25% increase would go into effect July 1, 2010, the County, in late 2009, approached the FOP about again deferring its 4.25% general wage increase. The FOP ultimately agreed as part of the reopener negotiations to defer its 4.25% general wage increase. The County, on its part, also insisted that all police officers forego their service increments for Fiscal Year 2011, and give up their tuition assistance program for FY 2011.

C. The Proposals and the Relevant PBL Factors

Briefly stated, the FOP believes that given its prior concessions regarding general wage increases for FY10 and FY11 worth approximately \$10million, given the statutory criteria, and given the unique circumstances surrounding this limited reopener, the County's final offer proposals were requiring police officers to bear a disproportionate share of the burden of the economic downturn.

The FOP maintains that its modest proposal which involved major concessions for the FOP and no additional cost to the County, was the “more reasonable” proposal. The FOP does not believe that service increments represent additional cost to the County, does not believe that the \$4.5billion County budget depended on police officers forgoing service increments, and does not believe that a significant contractual change to the compensation of police officers was necessary, especially where the FOP was prepared to go two years (July 1, 2009-June 30, 2011) without significant economic enhancements.

The FOP also opposes the County proposal to suspend the tuition assistance program for FY11, maintaining that suspension of the tuition assistance program is harmful to the

career progression of police officers, and, in effect would be penalizing police officers for the County's mismanagement.

The County maintains that its proposals are necessary in order to deal with an unprecedented fiscal deficit in order to struggle to release a balanced budget by March 15, 2010. As proposed, the County Executive will be forced to impose significant and widespread eliminations and reductions to services and programs throughout the County, including position eliminations, the largest County-wide layoffs in history and the use of furloughs.

The wage freeze, including service increments, for the employees of the Police Department is part of the County plan to freeze wages across the board for all County agencies. The County submits that its LBFO is in the public interest, since the only viable way to absorb the \$1.2million FY11 cost of paying the service increments is to expand the County's use of both layoffs and furloughs.

As for the County's proposal to suspend the tuition assistance program for FY11, the County claims it will both save money better used to close the budget gap and to assess the viability and administration of the program moving forward.

It is obvious that the two items at the heart of the instant proceeding are the County's proposals for all police officers to give up their service increments for FY2011, and to suspend the tuition assistance program for FY2011. Accordingly, the Impasse Neutral will primarily focus on these two items for the purpose of determining which best final offer will be adopted.

In addition to Factor a), which has been referred to above, the Statute refers to six factors to be considered by the Impasse Neutral. Due to the limited nature of the reopener and the fact that it only affects FY2011, the Impasse Neutral does not find it necessary to consider Factors c. and d. for purposes of comparisons, and finds that Factor b., comparisons with like positions, for the reasons to be discussed further, has limited application.

Inasmuch as the County's employees throughout these proceedings was on "affordability", "ability to pay", and the "interest and welfare of the public", Factors e. and f. require consideration in the context of the parties' positions on these two principle issues.

D. Service Increments and Relevant PBL Factors

In the context of the County's final proposal, it does not appear that it considered the application of Factor a., the collective bargaining history, in the development of its final offer. According to the testimony of the County's Chief Administrative Officer, neither the previous deferral of a general wage increase for FY2010 nor the limited nature of the reopener were taken into consideration in formulating the County's proposal, but rather the only factors the County relied upon were affordability and public interest.

Yet, as the FOP correctly noted, and the Impasse Neutral emphasized throughout these proceedings, this reopener was the result of an MOU which, in addition to deferring the general wage increase for FY2010, extended the term of the originally negotiated CBA for an additional year, and was solely to address certain compensation for FY2011. It was not intended to be a complete renegotiation of all terms and conditions of employment, which would occur at the expiration of the current CBA.

Furthermore, service increments must be considered beyond the economic cost the County attaches to them. They are an integral part of police officer compensation in Montgomery County. Unlike other County employees who have a "min-max" system, whereby they may be hired anywhere on the scale often based on their experience, police officers are hired at the first step on their wage scale, one service increment at a time. In that regard, Montgomery County police officers have received service increments every year for at least the past 30 years, and that includes years in which there have been "down" economic times.

With regard to factors of comparisons with other Metropolitan Washington Area jurisdictions, it must again be noted that the instant case does not involve a complete negotiation of a CBA, or the entry into a multiple-year contract that could more dramatically affect the relative standing of Montgomery County police officers to their counterparts.

Rather, it involves a one-year limited reopener, without a general wage increase. As such, an analysis of comparative compensation is not dispositive, and, therefore, it is unnecessary for the Impasse Neutral to address the parties' disagreement as to whether Baltimore City, Baltimore County and Howard County should be considered part of the Washington Metropolitan Area for comparison purposes, and, if so, what weight should attach thereto.

In addition, and more to the point, the County's analysis presented no evidence that any Maryland county had or intended to suspend service increments in FY 2011.

Moreover, the FOP notes that the FY 2010 general wage increase deferral of 4.25% resulted in a loss of \$4,000 in wages to the average officer, and the County saved about \$5million. Moreover, the County Council refused to fund a slight expansion of the personal patrol car program which had been agreed to the in the same March 2009 MOU, a benefit worth approximately \$237,000. Then, as part of these reopener negotiations, the FOP agreed with the County's request that it again defer its 4.25% general wage increase for FY 2011, thereby resulting in an additional loss of \$4,000 per officer, in effect giving the County a savings of approximately \$10million for the two-year period July 1, 2009-June 30, 2011.

Finally, the Impasse Neutral must comment on what appears to be the County's attempt to tie the decision herein to its "impact" on other County unions, specifically the contention that the granting of service increments herein would result in other County unions receiving them in their upcoming negotiations.

First, and foremost, the PBL specifically directs the Impasse Neutral to consider existing wages, hours, benefits and conditions of employment of other County employees. There is no statutory authority to take into account the impact of the instant decisions on future negotiations involving other County unions. Moreover, those other County unions cited by the County are or will be involved in full collective bargaining, where trade-offs can be used to effect service increments, for example, no furloughs or layoffs.

Finally, nothing in the Statute requires that if the FOP receives service increments under the unique circumstances of this case, that other County employees must receive service increments. Nor does the County's "me-too" language in its proposal offset the

FOP's position. If, for example, one of the other County unions receives service increments through an interest arbitration decision, the FOP would only be entitled to a reopener. And, it should be noted, that since the County does not negotiate with the teachers – the largest union in the County – the “me-too” proviso would have no application.

Notwithstanding the economic significance of service increments and the unheralded structural change a freeze for FY 2011 would entail, the County professes that the dire economic circumstances force it to suspend such service increments. In support thereof, the County points to its need to address a \$680million deficit for FY 2011 County-wide in the context of a \$4.5billion budget, and its statutory mandate to submit a balanced budget.

At the outset, there is no disagreement that the cost to the County for paying service increments in FY 2011 would be \$1.2 million, and these service increments do not constitute any new cost increases to the County. Nonetheless, the County seeks to include the cost of service increments in its position regarding general wage increases and relative standing of Montgomery County police officers vis-à-vis other police officers in the Metropolitan Washington jurisdiction. The County's position is misplaced. The Impasse Neutral herein agrees with a previous decision by Interest Arbitrator Porter in 1992, wherein he found convincing the FOP position that annual service increments should not be considered as general wage increases.

Citing factors e. and f., the County argues that what is essential is to maintain an acceptable level of services to the public in Montgomery County in a devastated economy, and establishing priorities in the operating budget to deal with employee compensation. Based on the FY 2011 forecast, the county argues that it should not be required to further cut services and programs to the public, as well as layoff employees and reduce wages through furloughs, in order to provide a service increment. In order to protect the public interest, the County contends that the only viable way to absorb the \$1.2 million FY 2011 cost of granting the service increments is to expand the County's use of both layoffs beyond those already proposed both in the Police Department and throughout then County, and to institute furloughs.

In support of its position the County points to the follow economic indicators for FY 2011: (1) the Relevant General Fund tax revenues for Montgomery County will lag behind original estimates for FY 2010; (2) the forecast shows an overall 3.4% decline in major revenue sources for FY 2011; (3) the revenue situation is not likely to improve in FY 2011 due to stagnation in income tax and property tax revenues.

In addition to its final offer proposals, the County notes the steps already taken County-wide which include a hiring freeze; liquidation of selective contracts; a procurement freeze; a reduction to services and programs; position reductions; and layoffs.

Much of the hearings were taken up with economic presentations by both sides with regard to the FY 2011 budget deficit, the long range CIP projections, the breakdown of cost, programs, services, and purchases under the tax-supported Operating Budget which finds compensation, and the Capital Budget for facilities, which is largely funded by borrowing, with each party seeking support their respective position on the service increments, with FOP pointing to "priorities", and the County pointing to balancing public interest with a deficit budget.

While these presentations obviously are the type of economic data useful in the context of complete collective bargaining or a multi-year consideration of proposed general wage increases, they have a much more limited application in this narrow reopener as to service increments with a FY 2011 cost of \$1.2 million in a \$4.5 billion dollar budget, seeking to reduce a projected \$680 million dollar budget.

In that regard, the FOP has already "contributed" to that reduction effort by again agreeing to forego its negotiated \$4.25 general wage increase for FY 2011, and by proposing two additional options to the County to control compensation-related cost for FY 2011, although minimal in the over-all scheme of cost savings.

Nonetheless, the County maintains that its chief priority is the need to maintain services and programs at an acceptable level as balanced against the "demands" of the FOP in this proceeding. In that regard, and in an effort to balance the budget, as mandated by Statute,

the County identifies three tools to accomplish this objective: 1) cutting services; 2) raising taxes; and 3) freezing and/or cutting compensation.

As to the first two options, the County maintains that it has already made deep cuts in service, and that raising taxes is neither a practical nor a politically viable option. That leaves reducing the County's expenditures on compensation, since 80% of the County's budget is personnel costs. In that regard, the County argues that even if it utilizes all of the budget cuts already proposed leading up to the final balanced budget presentation on March 15, 2010, it must still cut compensation costs through additional layoffs and furloughs.

That being the case, even a savings of \$1.2 million through freezing service increments for FY 2011, would not have much of an impact on reducing this budget deficit. And, as the FOP points out, this \$1.2 million in a \$4.5 billion budget, is more of a question of "priorities", as opposed to "affordability". In that regard, the FOP suggests that the County has options available to address this \$1.2 million "shortfall", by, for example, the capacity to reduce overtime, furlough police officers, or to further defer the start or size of the new recruit class. As to the latter, which is an option the County has identified, postponing the recruit class for the rest of the fiscal year (April to June, 2010) would save over \$520,000.

But the thrust of the County's "affordability" argument and its insistence on the need to suspend the \$1.2 million payment of service increments for FY 2011, extends beyond the FOP and this limited economic reopener for FY 2011. Indeed, the County directly states that its current proposal for the FOP relies on no general wage increase or service increments throughout the County, with savings attributed to a County-wide freeze of service increments totaling over \$27 million.

That the County's emphasis is County-wide is further evidenced by statements made by County witnesses, as well as those included in its post-hearing submission. For example, in response to the FOP's argument that the service increment in FY 2011 is a "no cost item" to the County, the County stresses that, even if that is true, it is still a cost, and that it has an inevitable domino effect on the County's efforts at a County-wide freeze as it involves other County unions.

That rationale is reinforced by the County's position that the cost of the service increment for the FOP cannot be examined in a vacuum. The policy of the County, as articulated by the County Executive, is to maintain consistency with regard to service increments across all the agencies and involves both the represented and non-represented workforce. Yet, at the time of the hearings herein, the County had yet to negotiate service increments or COLAs with its School employees or General employees.

As the Impasse Neutral has already indicated, nothing in the Statute authorizes the Impasse Neutral to take into account the impact of his decision on future or current negotiations involving other units. In addition to having to speculate on any impact the Impasse Neutral is aware that in negotiating complete multi-year collective bargaining packages with other County unions, trade offs of non-compensation issues in lieu of receiving a service increment could very well come into play.

Accordingly for the reasons articulated with regard, in particular, to factor a.) and factor f.), the Impasse Neutral finds the wage concessions made by the FOP for FY 2010 and 2011, the limited nature of this reopener Interest Arbitration, and that in a \$4.5 billion budget, the minimal cost of service increment alone should not unreasonably impact the normal standard of services. Therefore, the Impasse Neutral finds that Statutory factors do not support a freeze of service increments for FY 2011.

D. Tuition Assistance and the PBL Factors

The County proposal seeks the suspension of the Tuition Assistance Program (TAP) for FY 2011. In order to place the respective positions on the issues in perspective, it is helpful to provide the context in which the program evolved, and events leading up to the County's proposal.

The Police Employee Tuition Assistance ("ETAP" or "TAP") is a college education program which also covers specialized police courses. It is a negotiated program, covered under Article 39 of the CBA, and the County is required to administer the program in accordance with its terms.

The County established a subsequent program, JITPAP, which covered job related type courses separately funded by the County and not included in the FOP contract.

As the record showed, sometime in 2009, the County unilaterally suspended the ETAP program, resulting in the filing of a grievance by the FOP, which is not part of this impasse proceeding. As a result of subsequent analysis performed by the FOP covering the period 2007-2009 for both ETAP and JITAP, questions have been raised as to whether all the monies expended under ETAP were for courses properly qualifying under ETAP, or whether payments were made for courses not eligible for ETAP, and are attributable to mismanagement.

While this is not the forum to address those questions, aspects of both the background and purpose of ETAP, as well as costs attributed to ETAP, are relevant to consider in light of the County's proposal to suspend ETAP for FY 2011.

In support of its proposal, the County claims that the suspension of ETAP will save approximately \$455,000 in FY 2011; that it is County's intent to suspend tuition assistance programs County-wide, resulting in a total savings of \$900,000 in FY 2011; and finally, that the grievance is not part of this proceeding. Citing the interest of the public, the County argues that this savings of money will help to avoid additional layoffs, furloughs, and disruptions to services. Further, if the FOP allegations about ETAP are true, it would be in the public interest to suspend the program pending investigation and correction of those problems in administration. In sum, the County argues that the normal stand of public services will suffer in the form of layoffs and furloughs at the expense of a one-year suspension to a program that benefits a relatively small portion of the population.

To the extent that problems associated with the administration of ETAP need to be addressed, there is no need to suspend the program in order to do so. The parties, either through the pending grievance or through increased oversight of course approvals, can certainly address this during FY 2011.

And, whether the cost of ETAP for FY 2011 would be over \$400,000, as the County contends, or under \$100,000 if properly administered, as the FOP contends, in the context of a

\$4.5 billion budget, and a \$680 million deficit, the cost of the ETAP should have minimal impact on services, or on the need to take other employment reduction actions. As with the service increments, based on the County's presentation, it appears that the emphasis of the County's proposal is related to its plan to freeze tuition assistance County-wide. As previously noted by the Impasse Neutral that "plan" is not properly part of the limited reopener proceeding, nor do the statutory factors apply to such a "plan".

But of perhaps greater consideration is the "impact" of the County's proposal on the underlying significance of ETAP to the employment of Montgomery County police officers. Such a suspension would be harmful to career progression opportunities of police officers. Service promotions in the Police Department depend on attainment of certain educational levels, which can be achieved through ETAP. Unlike other County employees, experience is not accepted as a substitute for education.

Accordingly, the Impasse Neutral does not find statutory factor support for the County's proposal to freeze tuition assistance for FY 2011.

Two items remain for consideration. Neither is of insufficient consequence to alter the Impasse Neutral's conclusion that the FOP's final offer is, on the whole, the more reasonable of the two offers presented. Since all of the final offer must be accepted or rejected, the FOP's proposals to amend Article 21 – Compensatory Leave by allowing the County at its option to restrict cash out of compensatory leave in FY 2011, and to add an additional paragraph to Article 36 – Wages, Section F. to allow the County at its option to suspend the requirement, for lateral transfers hired during FY 2011, that such employees will receive a 3.5% step for each year of qualifying service, are accepted.

In sum, applying the factors provided in the PBL, particularly factors a., b., e. and f., the Impasse Neutral finds that the FOP's final proposal is, on the whole, the more reasonable of the two offers presented.

GOVT



has - BD
CC
SFB
have { LL
MF
mo

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

April 14, 2010

055932

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Current Collective Bargaining Agreement between the County and IAFF

I have attached for the Council's review the current collective bargaining agreement between the Montgomery County Government and the Montgomery County Career Fire Fighters Association, International Association of Fire Fighters, Local 1664 (IAFF) for the years July 1, 2008 through June 30, 2011 (IAFF Contract). For FY11, the IAFF Contract calls for a general wage adjustment of 3.5 percent, a pay plan adjustment of 3.5 percent, and a 3.5 percent service increment. As you are aware, my Recommended FY11 budget does not include a general wage adjustment, service increments, or pay plan adjustments for County Government employees, including public safety. Although the wage increases in the IAFF Contract have been negotiated through collective bargaining several years ago, my intention is not to create hardship on any County employees by funding the FY11 wage increases provided for in this contract. It is my recommendation to not include the above compensation increases in the FY11 Operating Budget.

The IAFF Contract provides for increases in certain special pay differentials beginning July 1, 2010. These special pay differentials are funded as part of my Recommended FY11 budget. The contract also calls for an increase in tuition assistance allowance for IAFF members in FY 11. I have suspended the Tuition Assistance Program for all County Government employees for FY 11; therefore, the scheduled increase in the IAFF Contract will not be effective.

I have attached a summary of the components of the IAFF Contract that would have a fiscal impact in FY11.

Attachments

IL: sw

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2010 APR 14 PM 4: 24

Memorandum of Agreement between the Montgomery County Government and
the Montgomery County Career Fire Fighters Association, International
Association of Fire Fighters Local 1664

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

Please use the key below when reading this document:

Underlining

[Single boldface brackets]

* * *

Added to existing agreement

Deleted from existing agreement

Existing Language unchanged by the parties

* * *

Article 2 – Organizational Security

* * *

Section 2.3 G. Union Access to County Network

The Employer shall provide the means for the Union President, 1st Vice President, 2nd Vice President, and any other mutually agreed upon union representative to wireless Internet access at County worksites, if available. This access will be for the purpose of conducting official labor/management business at County worksites.

* * *

Section 2.5 C Electronic Correspondence

The County agrees to create a #FRS.Bargaining Unit email group for official union correspondence sent to bargaining unit employees. The County agrees to update this email group at least two (2) times a year. Access to send correspondence to this group will be limited to the principal officers of the Union. The Union will notify the County at least one (1) time a year, usually in July, of the current principal officers of the Union.

* * *

Article 4 – Visitation

* * *

The employer shall ensure that representatives of the Local Union are issued access cards or other such devices for the purpose of gaining entry to electronically secured facilities where bargaining unit employees are assigned. The Local Union Executive Board, which includes the

Principal Officers and District Representatives, shall receive access to any worksite where bargaining unit employees are assigned.

The County agrees to provide access to the Executive Office Building (EOB), including the parking garage, for the Union President, 1st Vice President and 2nd Vice President for Labor/Management related business held at the Executive Office Building.

The Union will provide the County a list of all Principal Officers and District Representatives of the Local Union at least once a year. This list will usually be provided in July and at any other time there is a change in the Executive Board.

* * *

Article 7 Sick Leave

* * *

Section 7.14 Sick Leave Donor Program

The Sick Leave Donor Program allows bargaining unit employees who have achieved merit system status to give additional sick leave to eligible County [bargaining unit] employees who have exhausted all types of accrued leave.

* * *

A. Approval of Sick Leave Donations; Employee Eligibility to Receive Sick Leave Donations

1. The Fire Chief or his designee (other than the employee's supervisor), will approve a sick leave donation for an employee who reports to the supervisor, if the employee:

* * *

- e. has submitted the following to the department head or his or her designee ([on] or another has submitted the following on the employee's behalf);

* * *

B. Employee Eligibility to Donate Sick Leave

1. A full-time employee donor must keep a balance of at least 96 Hours (2,496 Hour Work Year), 84 hours (2,184 Hour Work Year), and 80 hours (2,080 Hour Work Year) of sick leave after donating sick leave.

Nothing shall preclude a Montgomery County Fire and Rescue Service bargaining unit employee from receiving sick leave donated by any eligible County [bargaining unit] employee. [, excluding a Police

bargaining unit employee, who is not employed by the Montgomery County Fire and Rescue Service.]

Additionally, nothing shall preclude a Montgomery County Fire and Rescue Service bargaining unit employee from donating sick leave to any eligible County [bargaining unit] employee. [, excluding a Police bargaining unit employee, who is not employed by the Montgomery County Fire and Rescue Service.]

* * *

Article 10 – Disability Leave

* * *

Section 10.6 Change in Work Status:

* * *

- C. Light Duty: The Fire Chief shall consider on a case by case basis requests for 24 hour light duty shifts. Such requests shall not be unreasonably denied.

Section 10.7 Secondary Employment

- A. For any employee entitled to disability leave, the employer shall pay the covered employee compensation in accordance with section 10.2 governing disability leave.
- B. The employer shall pay compensation for the period that the covered employee is entitled to disability leave for a maximum period of eighteen (18) months, except as set forth in 10.2(b) and 10.3(b).
- C. The employee shall be eligible for compensation for such disability leave if the employee is temporarily disabled from the duties of the public safety employment that gave rise to the injury, regardless or whether the employee engages in secondary employment, provided that:
1. The secondary employment commenced prior to the injury;
 2. The duties of the secondary employment are not likely to cause delay or preclude full recovery and return to work as certified by the FROMS physician and such employment is approved by the Fire Chief. Such requests shall not be unreasonably denied.

* * *

Article 14 – Overtime

14.1 Policy

* * *

- E. Personnel on Kelly will be offered the first opportunity to work overtime. All day work Kellys will be assigned a “shift equivalent” Kelly (i.e., A-1, B-1, C-1, A-2, B-2, C-2, etc.) and shall be considered the “off-going” shift for days their shift work equivalent is the off-going shift and the “on-coming” shift for days that their shift work equivalent is the on-coming shift, as based on their “shift equivalent” (i.e., A, B or C).

Scheduling shall hire the bargaining unit employee with the least accrued overtime worked, year-to-date, before bargaining unit employees with higher accrued year-to-date overtime. The following order shall apply:

[1) Employees on Kelly Day will be provided the first opportunity for overtime;

2) Employees on the off-going shift will be provided the second opportunity for overtime; and,

3) Employees on the on-coming shift will be provided the third opportunity for overtime.]

1. Kelly Day personnel within the station, including personnel who sign up for either dayside or night side only. If more than one person is on Kelly Day within the station, then the one with the least amount of overtime hours is hired first.
2. Kelly Day personnel within the battalion, including people who sign up for either dayside or night side only. If more than one person is on Kelly Day within the battalion, then the one with the least amount of overtime hours is hired first.
3. Kelly Day personnel countywide, including people who sign up for either dayside or night side only. If more than one person is on Kelly Day within the County, then the one with the least amount of overtime hours is hired first.
4. Off-going shift personnel within the battalion shall have the next opportunity for overtime during the entire 24 hour period that they are the off-going shift. Personnel with the least amount of overtime hours are hired first.
5. Off-going shift personnel countywide shall have the next opportunity for overtime during the entire 24 hour period that they are the off-

going shift. Personnel with the least amount of overtime hours are hired first.

6. The on-coming shift personnel within the battalion will have the next opportunity for overtime during the entire 24 hour period that they are the on-coming shift. Personnel with the least amount of overtime hours are hired first.
7. On-coming shift personnel countywide shall have the next opportunity for overtime during the entire 24 hour period that they are the on-coming shift. Personnel with the least amount of overtime hours are hired first.
8. If no personnel remain on the overtime sign up list or unscheduled overtime occurs after 0700 hours and requires a position to be filled immediately, the schedulers shall use all practicable means to fill every overtime vacancy with the bargaining unit employee having the lowest number of overtime hours worked year-to-date.

In order to maintain proper unit staffing at Fire/Rescue stations that begin the workday at 0600 hours, the Scheduling Office will contact all Kelly Day personnel to fill the vacancy. When the list of people on their Kelly Day has been exhausted, personnel from the on-coming shift will be offered the opportunity to work. After both of these lists have been depleted, personnel from the off-going shift will then be given the opportunity to work.

* * *

- H. [For purposes of determining any existing overtime cap, special pay differentials shall be used in determining the employee's base salary per calendar year.] The County shall maintain a single electronic application, database or other like system to track all overtime hours worked by bargaining unit employees. This application, database, or other like system shall be the same system that is used by the County's schedulers to assign bargaining unit employees to worksites. The County shall ensure that all overtime hours worked, as reported on employees' timesheets, are entered in to this system within ten days of the end of the pay period. The County shall provide the Union with reports from this system or access to the system with the ability to create reports along with payroll reports showing all calendar year-to-date overtime worked by bargaining unit employees on a bi-weekly basis.

If the County elects to provide the Union access to the system, the County agrees to also provide the Union with instructions on how to access the data; and the County further agrees to provide the Union technical support.

Overtime pay for an individual employee is limited to an amount equal to one hundred (100) percent of the employee's total county salary. Total county salary, for purposes of this article, means an employee's wage scale salary, including any special duty differentials and ESD's, earned in a calendar year as calculated by the payroll section.

Any bargaining unit employee reaching the overtime cap may only work additional overtime with the express approval of the Fire Chief. Being held on an incident, held over for relief or mandatory callback are the only automatic exceptions to the one hundred (100) percent limitation. However, the Fire Chief may authorize overtime for employees that have reached the overtime cap in cases where the employee in question is the only person that is available to work the overtime assignment.

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

During the term of this Agreement, if five (5) percent of the bargaining unit employees receive overtime compensation that exceeds seventy five (75) percent of their annual wage scale salary (inclusive of special duty differentials and ESD's) during any calendar year, then the overtime cap will be subject to re-negotiations. Failing prompt agreement, either party may declare impasse and the dispute shall be expeditiously submitted to a neutral selected in accordance with the Fire and Rescue Collective Bargaining Law for the last best total package offer binding arbitration.

* * *

Article 17 – Special Duty Differentials

Section 17.1 Disposition of Assignment Pay Differentials

An employee who is transferred, promoted, demoted, or re-appointed to a position with an assignment pay differential will receive the designated differential. An employee who is transferred, promoted, demoted, or re-appointed from a position with an assignment pay differential to a position without the differential will forfeit the designated differential.

A. Hazardous Materials

Level III Assignment	\$1,637
Response Team Certification	\$407

Effective the first pay period beginning on or after July 1, 2009, increase the Hazardous Materials Level III Special Duty Pay Differential to \$1,837

Note: All bargaining unit personnel assigned to a Hazmat station or substation who are qualified as Hazmat Level III responders herein shall receive the assignment pay as specified herein.

B. Self Contained Breathing Apparatus Technician

Assignment \$1,637

Effective the first pay period beginning on or after July 1, 2009, increase the Self Contained Breathing Apparatus Technician Special Duty Pay Differential to \$1,837.

C. Fire Code Enforcement Division

Assignment \$1,637

Effective the first pay period beginning on or after July 1, 2009, increase the Fire Code Enforcement Division Special Duty Pay Differential to \$1,837.

D. Fire Investigations Unit

Assignment \$1,800

Effective the first pay period beginning on or after July 1, 2009, increase the Fire Investigations Unit Special Duty Pay Differential to \$1,837.

E. Fire Captain Serving as Station Commander \$2,887

Station Commander Pay shall be subject to satisfactory completion of established performance criteria/objectives as determined by the Employer.

F. Urban Search and Rescue Team (US&R)

Assignment: \$1,637
Response Team Cert.: \$407

Effective the first pay period beginning on or after July 1, 2009, increase the Urban Search and Rescue Team Assignment Special Duty Pay Differential to \$1,837.

G. Swift Water Rescue Team/Underwater Rescue Team

Assignment: \$1,637
Response Team Cert.: \$407

Effective the first pay period beginning on or after July 1, 2009, increase the Swift Water Rescue Team/Underwater Assignment Special Duty Pay Differential to \$1,837.

[Assignment and Certification Pay Differentials identified in section 17.1 subsections F and G will begin in the first full pay period following July 1, 2006.]

H. Scheduler

Primary Scheduler: \$1,637

Backup Scheduler: \$407

Assignment Pay Differentials identified in section 17.1 H will begin the first full pay period on or after July 1, 2008.

Effective the first pay period beginning on or after July 1, 2009, increase the Primary Scheduler Special Duty Pay Differential to \$1,837.

Section 17.2 Special Pay Differentials:

[A. EMT-B with I.V. Technician Certification \$2,000]

All current Paramedics will receive Assignment Pay in the amounts specified in the parties' CBA of July 1, 2002 through June 30, 2005

[B]A. Cardiac Rescue Technician

Assignment: \$4,315

Effective the first full pay period starting on or after July 1, 2010, increase the Cardiac Rescue Technician pay differential to \$4,515.

[C]B. Emergency Medical Technician - Paramedic

Assignment:

0-4 years EMT-P Svc \$5,830

5-8 years EMT-P Svc \$6,891

8+ years EMT-P Svc \$7,951

Effective the first full pay period starting on or after July 1, 2010, increase the Emergency Medical Technician pay differential to:

Assignment:

0-4 years EMT-P Svc \$6,080

5-8 years EMT-P Svc \$7,391

8+ years EMT-P Svc \$8,701

The differentials listed below in subsections [d & e] c & d will only apply to paramedics hired after July 1, 2005:

[D]C. Paramedic (CRT, EMT-I, or current EMT-P) \$3,000

[E]D. CRT, EMT-I, and EMT-P Hourly Differential while riding ALS unit:

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

Only personnel MCFRS certified as a CRT, EMT-I, or EMT-P, and assigned to ride an ALS "transport" unit, are eligible to receive the hourly differential referred to in Section 17.2 subsection E.

Hourly differentials identified in section 17.2 subsection E will be applied to all regular hours worked for bargaining unit personnel assigned as the EMS Training Coordinator(s).

Effective the first full pay period starting on or after July 1, 2010, increasing the CRT, EMT-I, and EMT-P Hourly Differential while riding ALS unit to:

<u>0-4 years certification</u>	<u>\$4.00</u>
<u>5-8 years certification</u>	<u>\$4.50</u>
<u>8 + years certification</u>	<u>\$5.25</u>

* * *

Article 19 – Wages

Section 19.1 Wage Increase

- A. Effective the first full pay period on or after [in] July 1, 2008, the base salary for all bargaining unit members shall be increased by [3] 2 percent.
- B. Effective the first full pay period on or after [in] January 1, 2009, the base salary for all bargaining unit members shall be increased by [1] 2 percent.
- C. Effective the first full pay period on or after [in] July 1, 2009, the base salary for all bargaining unit members shall be increased by 4 percent.
- [D]. Effective the first full pay period in January 2007, the base salary for all bargaining unit members shall be increased by 1 percent.]
- D. Effective first full pay period on or after July 1, 2009, add new longevity step at year 28 (LS2 – 3.5%)
- E. Effective the first full pay period on or after [in] July 1, 2010, the base salary for all bargaining unit members shall be increased by [5] 3.5 percent.

Section 19.2 Salary Schedule

* * *

- D. Effective at the beginning of the first full pay period beginning on or after July 1, [2003] 2010, a Step P will be added at a rate 3.5% greater than the current Step O. All employees will then receive one service increment increase. The existing Step A will then be removed from the schedule, and the remaining 15 steps will be re-lettered A through O.
- E. [Effective at the beginning of the first full pay period beginning on or after July 1, 2004, a Step P will be added at a rate 3.5% greater than the current Step O. All employees will then receive one service increment increase. The existing Step A will then be removed from the schedule, and the remaining 15 steps will be re-lettered A through O.]

Effective first full pay period on or after July 1, 2008, five Bargaining Unit employees will advance one step the following individuals.

- F. Effective first full pay period on or after July 1, 2008, make a one-time lump sum payment of \$3000 to nine Bargaining Unit Members.

* * *

Article 20 – Insurance Benefits Coverage and Premiums

* * *

20.3 Employee Benefits Committee:

* * *

- D. The parties agree to establish a joint committee consisting of an equal number of union representatives and employer representatives for the purposes of studying insurance cost saving measures regarding post-employment group insurance, including eligibility, premium share for employees hired on or after July 1, 2008, and coverage. The committee shall report to the parties before September 1, 2009.

* * *

Section 20.9 Prescription Drug Plan:

The Employer will continue to provide a prescription drug benefit for single and family coverage. The plan shall provide for two cards for family coverage. [For all employees the payment of premiums for this plan shall be based upon an Employer payment of 80% and an employee contribution of 20%.]

Effective January 1, 2009, the County shall provide prescription plans (High Option Plan - \$4/\$8 co-pays and Standard Option Plan - \$10/\$20/\$35 co-pays with a \$50 deductible) for all active employees. Employees who select the Standard Option Plan shall pay 20% of the cost of the Standard Option Plan. The Employer shall pay the remaining 80% of the cost of the Standard Option Plan. For employees who select the High Option Plan, the employer shall pay 80% of the total premium cost of the Standard Option Plan Option and the employee shall pay the remainder of the High Option Plan premium.

Both plans shall restrict generics. In the event the employee elects to receive a brand medication when a generic medication is available, the member shall pay the cost difference between the brand and generic medication, however, in the event a physician requires a brand medication, the employee shall not be responsible for the difference in cost.

Both prescription plans shall require that if an employee fills a prescription at retail more than twice, rather than utilizing mail-order, the member shall pay the cost difference.

* * *

Article 22 – Prevailing Rights

S. County to ensure bottle water is provided at each station.

* * *

Section 22.2 Notice and Opportunity to Submit Comments

A. Prior to the implementation of any new or revised Directive, Safety Bulletin, Policy, Procedure, Instruction⁹ relating to or affecting bargaining unit employees, the Employer shall provide the Union President, 1st Vice President, and 2nd Vice President with written, electronic notice and an opportunity to submit comments. If the Employer provides the Union with written, electronic notice and opportunity outside normal business hours (Monday through Friday, 7:00 am to 3:00pm), the electronically transmitted notices will be deemed received on the following business day. The employer will provide the Union written notice of its designee authorized to transmit documents for notice and opportunity.

* * *

Article 23 – Hours of Work

* * *

Section 23.7 Hours of Work for Part-Time Employees

* * *

B. Part-time employees shall be extended benefits and working conditions under the following terms:

* * *

3. Tax Deferred Compensation. The maximum deferred salary amount shall be in accordance with section 457 of the Internal Revenue Code.

* * *

Section 23.8

The County agrees to form a joint committee with equal numbers of Union and County representatives to study and make strategic recommendations to the County Executive before January 1, 2010 regarding work hours for bargaining unit employees. The Union representatives on the Committee shall be considered to be on a detail if working during these meetings. Hour for hour compensatory time or pay at the employee's regular hourly rate shall be credited to Union representatives who attend meetings on their day off.

* * *

Article 26 – Personnel Files/Records

* * *

Section 26.11 Internal Affairs Files

1. The Internal Affairs Division shall be the repository for the files.
2. Access to these files shall be limited to:
 - a) The employee, but only to the extent allowed by item 3 below
 - b) Fire Chief or designee
 - c) County Attorney or designee (need to know basis; i.e., when the employee is involved in litigation)
3. The Department will provide the employee and the Union any written statements (e.g., citizen complaints, employee observations, etc.) in the possession of the department and used in connection with an adverse action taken against a bargaining unit employee. These statements will be sanitized (i.e., address, phone number deleted) to protect privacy rights in accordance with the law.
4. In cases involving complaints where the charges were deemed unsustainable or unfounded, the files shall be expunged at the later of three (3) years after the date the findings were made or any applicable statute of limitations or at the conclusion of any pending litigation.
 - a. Files involving complaints where a charge was sustained shall be eligible for expungement at the latter of five (5) years or any applicable statute of

limitations or at the conclusion of any pending litigation.

- b. The expungement method shall be the shredding of the physical file. In cases where more than one bargaining unit member is involved and one or more bargaining unit members is not entitled to expungement, the name of the bargaining unit member who is eligible for expungement will be redacted from those documents that refer to multiple bargaining unit members. Those documents that refer only to the bargaining unit member who is eligible for expungement shall be destroyed.
- c. The expungement of information from the electronic database shall consist of the electronic obliteration of the bargaining unit member's name and identification number.

* * *

Article 29 – Promotions

* * *

Section 29.7 Non-Penalty for Supervisory PCAP Entries

Employees shall not be penalized with regards to promotional examination or promotional eligibility for incorrect or incomplete entries into the PCAP system that are the responsibility of the employee's supervisor, or are otherwise not the responsibility of the employee.

Article 30 – Discipline

Section 30.1 Policy

- A. The Employer shall not suspend, discharge or otherwise discipline any employee of the bargaining unit except for cause.
- B. Once the Employer has determined there is cause to discipline an employee, the Employer agrees to give due consideration to the relevance of any mitigating and/or aggravating factors, in deciding the nature and level of disciplinary action appropriate, including, but not limited to:
 - 1. the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated;
 - 2. the employee's job level and type of employment, including his or her supervisory or fiduciary role, the frequency and level of his or her contact with the public, and the prominence of his or her position;
 - 3. the employee's past disciplinary record;

4. the employee's past work record, including his or her length of service to the Department, his or her job performance, his or her demonstrated ability to get along with fellow Department employees, and his or her dependability;
5. the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the Employer's confidence in the employee's ability to perform assigned duties;
6. the consistency of the penalty with those imposed upon other employees with similar personnel history for the same or similar offense(s);
7. the notoriety of the offense or its impact upon the reputation of the Employer;
8. the clarity with which the employee was actually on notice of any rules, regulations, directives, policies, orders, instructions or the like that were violated in committing the offense, or had been warned about the conduct in question;
9. the potential for rehabilitation;
10. mitigating circumstances surrounding the offense, such as unusual job tensions, personality conflicts, mental impairment, harassment, bad faith, or malice or provocation on the part of others involved in the matter; and,
11. the potential adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Section 30.2 General Procedures

* * *

- C. Upon in-hand receipt of the Statement of Charges, the employee shall have [ten (10) (County business)] fourteen (14) calendar days to submit a written response. Any response must be received in the Office of the Fire Chief no later than the close of business [((ten) 10 County business)] fourteen (14) calendar days after receipt of the [SOC] Statement of Charges. The Union has the right to request an extension of time on behalf of the employee to respond to the Statement of Charges. Such requests shall not be unreasonably denied. If the employee responds to the Statement of Charges, the Employer must carefully consider the response and decide:

* * *

- E. If the Employer decides to implement the disciplinary action, the Employer shall issue a Notice of Disciplinary Action within a reasonable time, after the employee has submitted his/her response to the Statement of Charges or within a reasonable time upon the completion of the Pre-disciplinary Settlement Conference. A notice of disciplinary action must contain the following information:

* * *

Section 30.3 Disciplinary Examinations

* * *

C. Prior to an examination, the Employer agrees to inform the Union representative of the subject of the examination. The representative must also be allowed to speak privately with the employee before the examination. The Union representative must be allowed to speak during the interview. However, the Union representative does not have the right to bargain over the purpose of the interview. The Union representative can, however, request that the employer representative clarify a question so that the employee can understand what is being asked. When the questioning ends, the Union representative can provide additional information to the employer representative. Before providing such information, the Union representative and the employee may briefly meet privately for purposes of discussion.

D. [C.] The Employer is free to terminate any examination of an employee in connection with an investigation at any time for any reason.

E. [D.] The Union shall have no right to represent an employee who is examined as a witness or third party in any investigation or to represent an employee who is being counseled by a representative of the Employer concerning conduct, performance, or any other similar work-related matter. However, if the employee learns during the course of the witness/third-party investigation that he or she may be subject to discipline, he or she may request Union representation pursuant to Section 30.3.B., above.

F. [E.] The employee must answer all work-related questions truthfully, promptly and completely.

Section 30.4 Disciplinary Examinations of Fire Investigators

* * *

Section 30.5 Time, Place and Manner of Interviews/Examinations Conducted at the Internal Affairs Section

* * *

C. The employee shall be notified by the investigating official of the alleged charges or conduct for which the employee is being investigated upon notification of interview/examination being scheduled.

Section 30.6 Access to Records

- A. Upon issuance of a Statement of Charges, the Employer shall provide the employee or his or her counsel or chosen representative with:
1. Witness and/or complainant statements used in connection with any charge. These statements will be sanitized ([name] address and phone number deleted.)

* * *

Section 30.7 Days Defined

The term "days" as used in this Article shall mean calendar days. If the last day coincides with a weekend, holiday, or any other day the County Government is closed for normal business, the deadline will be moved forward to the close of the next calendar day that the County Government is open for normal business.

* * *

Article 35 – Health and Safety

Section 35.1 Joint Health and Safety Committee

- A. The Employer shall take all reasonable steps to preserve and maintain the health and safety of its employees. To that end, the Employer agrees to maintain a joint health and safety committee, to be composed of three (3) members from the bargaining unit appointed by the President of the Union and three (3) members appointed by the Fire Chief or designee. The committee shall:

* * *

4. Study, review, and evaluate complaints involving indoor air quality at any worksite to which bargaining unit employees are assigned. The committee may consult with any relevant subject matter experts, including but not limited to representatives from the Department of Finance, Risk Management Division, and the Department of Public Works and Transportation, Facilities Division. In the event the committee makes a joint recommendation that indoor air quality testing is advisable, such testing shall be conducted in a timely manner. The Union will be provided results from any indoor air quality analysis within two weeks of the completion of the analysis.

* * *

Article 38 – Contract Grievance Procedure

* * *

Section 38.2 Initiation of a Grievance

- A. The Union may in its discretion, in cases of suspension, demotion or dismissal only, skip step[s] 1 [and 2] of the Grievance Procedure and take a grievance directly to step [3] 2 - the [Chief of Administrative Officer] Office of Human Resources Director. If the Union exercises its discretion pursuant to this subsection, it will so notify in writing the Office of Human Resources upon filing the grievance.
- B. At the option of the Union, a grievance may be presented informally by a local representative of the Union or designee of the Union to the [appropriate Shift Chief] MCFRS Labor Relations Officer or designee for resolution. If the grievance is not resolved at that stage, it may be processed as provided below.

Section 38.3 First Step of the Grievance Procedure

A grievance shall be presented in writing by the Union to the [Division] Fire Chief within twenty (20) calendar days of the date the employee knew or should have known of the event giving rise to the grievance. Provided that if the grievance is presented to the [Career Duty Operations Chief] MCFRS Labor Relations Officer or designee as provided above, an additional [ten (10)] fourteen (14) calendar days shall be added to the time provided. The [Division] Fire Chief, or his designee, and representatives of the bargaining unit, shall meet and discuss the grievance within [fourteen (14)] twenty one (21) calendar days after it is presented to the [Division] Fire Chief. The [Division] Fire Chief shall respond in writing, to the grievance within [ten (10)] fourteen (14) calendar days after the meeting.

[Section 38.4 Second Step of the Grievance Procedure

The Union may appeal the decision of the Division Chief by presenting a written appeal to the Fire Chief or designee for Montgomery County (hereinafter Fire Chief) within fourteen (14) calendar days of the Union's receipt of the Division Chief's decision. The Fire Chief, or his/her designee, and representatives of the bargaining unit, shall meet to discuss the grievance within fourteen (14) calendar days after presentation of the appeal to the Fire Chief or designee. The Fire Chief or designee shall respond, in writing, to the grievance within ten (10) calendar days of the meeting.]

Section 38.[5]4 [Third] Second Step of the Grievance Procedure

The Union may appeal the decision of the Fire Chief or designee by presenting a written appeal to the [CAO] Office of Human Resources Director within fourteen (14) calendar days of the Union's receipt of the Fire Chief's or designee's decision. The [CAO, or his/her designee,] Office of Human Resources Director and representatives of the bargaining unit, shall meet to discuss the grievance within [fourteen (14)] twenty one (21) calendar days after presentation of the appeal to the [CAO] Office of Human Resources Director. The [CAO] Office of Human Resources Director shall respond, in writing, to the grievance within [fifteen (15)] forty five (45) calendar days of the meeting.

Section 38.[6] 5 Binding Arbitration

- A. Upon receipt of the response from the [CAO] Office of Human Resources Director, either party may refer the grievance to arbitration by providing written notice to the other party

within sixty (60) days after receipt of the response of the [CAO] Office of Human Resources Director by the Union. The arbitrator shall be chosen from a panel composed of persons agreed upon by the parties. At least sixty (60) days prior to the expiration of this Agreement, one or both parties may provide written notice to the other that it no longer consents to retaining a particular member(s) of the arbitration panel. The parties shall fill the panel vacancy by mutual consent.

* * *

Section 38.[7] 6 Arbitration Procedures

The following procedures shall apply to all arbitrations:

- A. The parties will each pay one-half (1/2) of the arbitrator's fees and expenses, except as specified in paragraph (38.[7] 6.I and J, and 38.7 [8.D]) of this section.
- B. Arbitration hearings will be held on the Employer's premises or at any site to which the parties' mutually agree.

The parties may appoint representatives to attend the arbitration hearing. However, in cases where representatives may be called to give testimony in the hearing, either party may object to the presence of that individual, and the matter will be decided by the arbitrator.

* * *

- G. The County shall submit the following information to the Arbitrator and the Union at least [ten (10) working] fourteen (14) calendar days before the hearing:

* * *

Except for item #1 above, the Union shall submit the same information to the Arbitrator and the County, at least [ten (10) working] fourteen (14) calendar days before the hearing.

* * *

Section 38.[8]7 Powers of Arbitrator

* * *

Section 38.[9]8 Days Defined

* * *

Section 38.[10]9 Processing Grievances During Working Hours

* * *

Section 38.[11]10 No Reprisals

* * *

Section 38.[12]11 Time Limits

* * *

Section 38.[13]12 Waiver/Appeal

* * *

Section 38.[14]13 Discipline Grievances

* * *

Section 38.[15]14 Exclusivity of Forum

* * *

Section 38.[16]15 Granting of Relief

* * *

Section 38.[17]16 Duty to Notify

* * *

Section 38.[18]17 Alternative Dispute Resolution Processes

* * *

A. Pre-discipline Settlement Conferences

* * *

8. At either parties' request, a Non-[DFRS] MCFRS management representative (selected from an existing MCGEO Pre-Discipline Settlement Conference Committee) will replace the [DFRS] MCFRS management representative. At either parties' request, a non IAFF Local 1664 Union representative will replace the IAFF Local 1664 Union representative on the Committee. (This selection option will be considered a two year pilot program, beginning with this agreement and expiring on June 30, 2007, unless the parties mutually agree to extend). (The selection of the non IAFF Local 1664 Union representative shall be made within the sole discretion of the Union President).

* * *

B. Grievance Mediation

1. Upon receipt of the Step [3] 2 [CAO] Office of Human Resources Director's disposition, the Union and Employer may voluntarily agree to

grievance mediation. Grievance mediation request must occur prior to deadline for invoking arbitration. If the parties agree to attempt mediation, the arbitration proceeding will be stayed pending exhaustion, as determined by one of the parties, of the mediation process.

* * *

Article 41 – Printing of Contract

The County agrees to print [1,000] 1,500 copies of the contract in booklet form to be provided to the Union within ninety days of the effective date of this Agreement. The cover page of the Agreement shall be designed by mutual agreement between the parties. The cost of printing shall be shared equally by the parties. The County agrees to provide the Union four (4) first run copies of the printed Agreement prior to publication to proof read. The County agrees to correct all spelling and grammatical errors found during proof reading prior to publication and disbursement.

* * *

Article 48 – Job Sharing Program

* * *

Section 48.5 Benefits

D. Tax Deferred Compensation. The maximum deferred salary amount [a Job Sharing employee can defer is 25% of the reduced salary] shall be in accordance with section 457 of the Internal Revenue Code.

* * *

Article 50 – Duration of Contract

The duration of this Agreement shall be from July 1, 2008 through June 30, 2011.

* * *

Article 51 – Pensions

E. Amend County Code to provide that any employee who is or becomes entitled to benefits pursuant to § 9-503 of the labor and employment article of the annotated code of Maryland, or who incurs esophageal, lymphatic, testicular, brain, lung, bladder, kidney cancer or multiple myeloma or melanoma or any blood borne pathogen shall automatically be entitled to disability leave for a service connected injury until and unless such claim is eventually denied by the Maryland Workers' Compensation Commission.

Amend Montgomery County Code to provide that any employee who is or becomes entitled to benefits pursuant to § 9-503 of the labor and employment article of the annotated code of Maryland, or who incurs esophageal, lymphatic, testicular, brain, lung, bladder, kidney cancer or

multiple myeloma or melanoma or any blood borne pathogen shall automatically be entitled to service connected disability retirement benefits under the Montgomery County Employees' Retirement System.

* * *

Article 54 – Tuition Assistance

* * *

Section 54.11

The County will increase the maximum annual allowance payable to a bargaining unit employee under the Employee Assistance Program to \$1,630 for FY 2009, \$1,730 for FY 2010, and \$1,830 for FY 2011. [\$1,330 for FY 2006, \$1,430 for FY 2007, and \$1,530 for FY 2008.]

* * *

Article 57 – Emergency Communications Center

* * *

Section 57.2 Differentials

An employee who is transferred, promoted, demoted or re-appointed will be compensated for special pay differential entitled to the incumbent of a position designated for a differential. An employee who is transferred, promoted, demoted, or re-appointed from a position entitled to a special pay differential to a position not so entitled will forfeit such additional compensation. All ECC Special Duty Differentials are based on a 12-month assignment. Assignment of less than 12 months will receive a prorated Special Duty Differential based on the length of the assignment.

A. Special Duty Differential

Assignment – F/T	\$(3650) 5050
[Assignment – P/T	\$1366]
Certification	\$(730) 1000

Effective the first full pay period following July 1, 2009, increase the ECC Certification Pay from \$1000 to \$2000 annually.

[B. Shift Differential

Each bargaining unit employee assigned to the Emergency Communications Center shall receive \$1.45 for each hour worked between 7:00 p.m. and 6:59 a.m.]

[C]B. Field Training Differential

* * *

[D]C. Employees shall be eligible for the differentials enumerated above based upon criteria in effect at the time of initiation of this Agreement.

* * *

Section 57.7 Maintenance of ECC Certification

Bargaining unit employees certified to work in ECC and assigned to a station within the Division of Operations (those ECC-certified unit members who are not assigned as full-time or part-time ECC personnel) must work twenty-four (24) hours at ECC each month in order to maintain ECC certification. This may be one twenty-four (24) hour shift or two (2) twelve (12) hour shifts, as determined by the Employer.

Section 57.8 Leave Slots

For bargaining unit employees assigned to ECC, there will be two (2) twenty-four hour leave slots available per shift. In the event that additional staffing for ECC is provided by the Employer, the number of leave slots per shift will be renegotiated.

Section 57.9 Paramedics Assigned to ECC

Paramedics assigned to the ECC will be detailed once a month to a medic unit in order to maintain their skills and certifications.

* * *

Article 58 – IAFF Deferred Compensation Plan

* * *

Section 58.2 Process

J. Upon notice by the IAFF that the IAFF deferred compensation plan is prepared to accept auto enrollments, the employer agrees to withhold from unit members' biweekly pay such contributions as specifically directed by the IAFF or its administrator. The IAFF or its administrator is responsible for notifying employer of any contribution change.

K. Employees may opt out of any auto enrollment program at anytime in accordance with terms established by the IAFF and such opt out requests shall be transmitted to the employer by the Plan or its administrator for processing consistent with existing protocol for contribution changes. The IAFF will administer the auto enrollment arrangement in accordance with all applicable state and federal laws, including but not limited to:

- a. Preparing and distributing all required notices on a timely basis,
- b. Processing withdrawals of contributions made within the first 90 days of participation, and

c. Establishing default investments.

L. In accordance with applicable IRS regulations and guidance, an employee may elect to defer into the employee's deferred compensation account all or a portion of accumulated leave that has been approved by the CAO to be paid to the employee. Such an election is subject to the maximum allowable compensation deferral under applicable tax law. The employee must make the election for a specific dollar amount with the Plan Administrator of the Montgomery County Union Employees Deferred Compensation Plan. The employee will use the current election process for electing to defer compensation in the Montgomery County Union Employees Deferred Compensation Plan, and will be subject to County payroll processing deadlines. In the event the CAO approves a payout of such leave, the County shall publish an annual deferral schedule.

M. In accordance with applicable IRS regulations and guidance, an employee separating from County service may elect, before separating from County service, to defer into the employee's deferred compensation account all or a portion of accumulated leave that would otherwise be paid to the employee upon separation of service. Such an election is subject to the maximum annual allowable compensation deferral under applicable tax law. The employee must make the election for a specific dollar amount with the Plan Administrator of the Montgomery County Union Employees Deferred Compensation Plan. The Plan Administrator of the Montgomery County Union Employees Deferred Compensation Plan will administer this provision in accordance with applicable law, including but not limited to the amending the plan document to provide for such deferrals. The employee will use the current election process for electing to defer compensation in the Montgomery County Union Employees Deferred Compensation Plan, and will be subject to County payroll processing deadlines. The County shall publish an annual deferral schedule.

The parties agree to add the following articles to the contract:

Article 60 – Joint Labor/Management EMS Committee

A. There shall be an EMS Committee consisting of up to three (3) Union representatives appointed by the Union President and up to three (3) Employer representatives appointed by the Fire Chief. This Committee shall meet at least quarterly to discuss all matters relating to Emergency Medical Services.

Each side will select a lead representative. Upon mutual agreement of the lead representatives, the EMS committee may meet more than quarterly.

B. The Committee shall appoint, on a rotating basis, a Chairperson, who shall serve in that capacity for one year. The Chairperson shall be selected, alternately, by the President of the Union and the Fire Chief.

- C. Either party may refer any matter to the Committee. It is in the interest of the parties that the Committee reach consensus and provide recommendations on matters under its consideration. In the event that consensus cannot be reached, the Employer and Union representatives may provide their respective positions to the Fire Chief and the Union President for their review. In any event, each member of the Committee will be provided ten (10) business days to review and sign-off on Committee recommendations. If the Committee member does not review and sign-off on a Committee recommendation within ten (10) business days, the recommendation will be submitted to the Fire Chief and the Union President with the endorsement of the Committee.
- D. This committee shall have the authority to make recommendations to the Union President and the Fire Chief or designee. The Committee shall have no power to add or to amend any existing collective bargaining agreement between the parties or to discuss or adjust any pending grievance(s). The Employer and the Union shall exchange agenda items one week in advance of each meeting.
- E. The Union representatives on the Committee shall be considered to be on a detail if working during these meetings. Hour-for-hour compensatory time or pay at the employee's regular hourly rate shall be credited to Union representatives who attend meetings on their day off.

Article 61 – Medical Review Committee

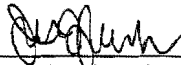
- A. The Medical Review Committee provided for in COMAR Title 30 shall include one bargaining unit member who is an ALS provider and one bargaining unit member who is a BLS provider. Bargaining unit members assigned to the Medical Review Committee shall be assigned by the Union President.
- B. The Union representatives on the Committee shall be considered to be on a detail if working during these meetings. Hour-for-hour compensatory time or pay at the employee's regular hourly rate shall be credited to Union representatives who attend meetings on their day off.

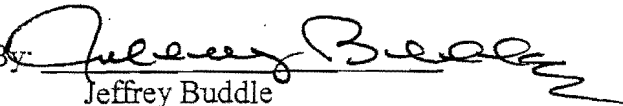
DROP PLAN FEATURES

Eligibility	Any time after an employee has met the age and service requirements for a normal retirement (pending council approval of a legislative amendment to be made per Article 51C of the agreement).
Drop Account (Three Components)	Employee's monthly pension benefit; Employee's pension contribution (pre-tax); Interest @ 8.25% compounded quarterly.
Monthly Pension	Accrued benefit frozen upon entering DROP.
Term Election	3 years with yearly opt out permitted (on anniv. of entrance to DROP)
Retirement	<p>Upon completion of 3 years DROP participation, or earlier opt out (see above); Employee cannot continue in DFRS employment;</p> <p>Employee receives DROP Account distribution (see below) and begins to receive monthly pension benefit (accrued benefit at time of entering DROP + COLA increases).</p>
Form of Distribution of DROP Account	Lump sum cash payment; or Lump sum rollover to IRA; or Annuitize.
Service-Connected Disability During DROP Period	<p>The participant will be entitled to either (at participant's option):</p> <ol style="list-style-type: none"> 1. The actuarial value of his service retirement benefit and his DROP account, or 2. The service-connected disability benefit that would have applied if he had not elected DROP.
<u>Non-Service Connected Disability During DROP Period</u>	<p><u>If the Chief Administrative Officer determines that a DROP participant is eligible for a non-service connected disability retirement, the participant must receive:</u></p> <ol style="list-style-type: none"> <u>1. The non-service connected disability retirement benefit provided under Section 33-43(h), with the benefit calculated as of the member's DROP entry date; and</u> <u>2. The DROP account balance.</u>

IN WITNESS WHEREOF, the parties hereto have caused their names to be subscribed hereto by their duly authorized officers and representatives this ____ day of March 2008.

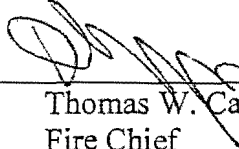
MONTGOMERY COUNTY CAREER
FIRE FIGHTER ASSOCIATION

By: 
John Sparks
President

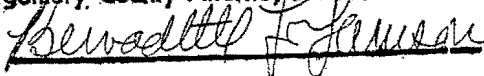
By: 
Jeffrey Buddle
Vice President

MONTGOMERY COUNTY,
MARYLAND

By: _____
Isiah Leggett
County Executive

By: 
Thomas W. Carr, Jr.
Fire Chief

APPROVED AS TO FORM AND LEGALITY.
Montgomery County Attorney's Office

By: 

Side Letter – Tuition Assistance Application

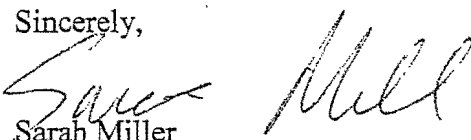
February 25, 2008

John Sparks
President
IAFF Local 1664

Dear President Sparks:

On July 1, 2008, the County and Union agree that there is no requirement for an immediate supervisor, Departmental representative or Division Chief's signature on a bargaining unit employee's Tuition Assistance Application. Once completed by the bargaining unit employee, the Tuition Assistance Application can be sent directly to the Office of Human Resources for action.

Sincerely,


Sarah Miller
Labor Relations Manager

Side Letter – Electronic Course Registration


February 25, 2008

John Sparks
President
IAFF Local 1664

Dear President Sparks:

This is to confirm that the County will make available an electronic registration process for all Fire, Rescue, and Emergency Medical courses held at the Public Safety Training Academy no later than July 1, 2008.

Sincerely,


Sarah Miller

Labor Relations Manager

Side Letter – Promotional Examination Schedule

February 25, 2008

John Sparks
President
IAFF Local 1664

Dear President Sparks:

For the term of the agreement that begins July 1, 2008, the County intends the following promotional examinations as follows:

Fire/Rescue Captain: examinations are to begin not before November 1st and no later than November 30th, 2009.

Fire/Rescue Lieutenant: examinations are to begin not before October 1st and no later than October 31st, 2008, and not before October 1st, and no later than October 31st, 2010.

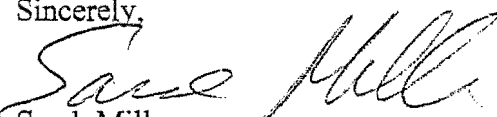
Master Fire Fighter/Rescuer: examinations are to begin not before October 1st and no later than October 31st, 2008, and not before October 1st and no later than October 31st, 2010.

The County may, at its discretion, conduct additional promotional examinations, or alter the above schedule to meet County needs. In the event the County determines additional promotional examinations or alterations are necessary, the County will use all practicable efforts to provide as much advance notice as possible.

Should an examination be conducted earlier than its anticipated date enumerated above, an employee who potentially would be eligible for a normally-scheduled examination will be allowed to sit for the earlier examination.

Should the employee pass the examination, the employee will not become eligible for promotion until they meet all eligibility requirements. These requirements must be completed by the time of the anticipated, normally scheduled examination date in the schedule above. Any employee failing to meet this requirement will be deemed ineligible for promotion until passing a subsequent promotional exam.

Sincerely,


Sarah Miller
Labor Relations Manager

Side Letter – Worksite Parking


February 25, 2008

John Sparks
President
IAFF Local 1664

Dear President Sparks:

This letter is to confirm the County's commitment to ensure adequate worksite parking for Stations 3, 23, and Rescue 2 and on an ad hoc basis at other worksites as the need arises.

Sincerely,


Sarah Miller
Labor Relations Manager

Side Letter – Random Drug Testing


February 25, 2008

John Sparks
President
IAFF Local 1664

Dear President Sparks:

Per our agreement during term bargaining, the parties agree that the County shall amend the existing drug and alcohol testing policy to provide for random drug/alcohol testing. As the parties also agreed, there will be no other changes to the policy.

Sincerely,


Sarah Miller
Labor Relations Manager

Side Letter – Broadcasting evacuation and mayday orders

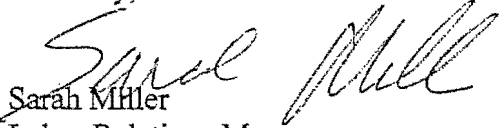
February 25, 2008

John Sparks
President
IAFF Local 1664

Dear President Sparks:

This letter is to confirm that the Fire Chief will issue an interim order to incorporate joint health and safety recommendations regarding broadcasting evacuation and mayday order on all channels identified by the committee. The Department will continue to review overall policy changes.

Sincerely,


Sarah Miller
Labor Relations Manager

Side Letter – Standard MOU for Positive Drug/Alcohol Tests

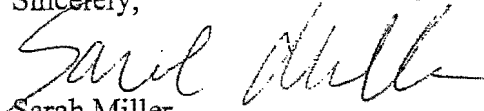
February 25, 2008

John Sparks
President
IAFF Local 1664

Dear President Sparks:

This letter is to confirm that the County and the Union agree to collaboratively develop a standard MOU on positive drug/alcohol tests reflecting prior agreements.

Sincerely,


Sarah Miller
Labor Relations Manager

Summary of Current Wage Agreement with IAFF for FY 11

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	19.1, Wage Increase	General Wage increase for term of the agreement effective the first full pay period on or after: 7/1/2010 - 3.5%	Yes	Yes	No	Yes
3	19.2, Salary Schedule	Effective first full pay period on or after 7/1/2010 Step P will be added	Yes	Yes	No	Yes
4	54, Tuition Assistance	Increase maximum allowance under the Employee Assistance Program to \$1,830 for FY 2011.	Yes	Yes	No	Yes

Current Agreement between the Montgomery County Government and the
Montgomery County Career Fire Fighters Association, International Association of
Fire Fighters Local 1664

The Montgomery County Government (Employer) and the International Association of Firefighters Local 1664 (Union), negotiated the economic changes for FY 11 listed below to be effective July 1, 2010 during term bargaining for fiscal years 2008-2011.

* * *

Article 17 – Special Duty Differentials

* * *

Section 17.2 Special Pay Differentials:

All current Paramedics will receive Assignment Pay in the amounts specified in the parties' CBA of July 1, 2002 through June 30, 2005

A. Cardiac Rescue Technician

Assignment: \$4,315

Effective the first full pay period starting on or after July 1, 2010, increase the Cardiac Rescue Technician pay differential to \$4,515.

B. Emergency Medical Technician - Paramedic

Assignment:

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

Effective the first full pay period starting on or after July 1, 2010, increase the Emergency Medical Technician pay differential to:

Assignment:

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

* * *

D. CRT, EMT-I, and EMT-P Hourly Differential while riding ALS unit:

0-4 years certification \$2.00

5-8 years certification	\$2.50
8 + years certification	\$3.25

* * *

Effective the first full pay period starting on or after July 1, 2010, increasing the CRT, EMT-I, and EMT-P Hourly Differential while riding ALS unit to:

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

* * *

Article 19 – Wages

Section 19.1 Wage Increase

* * *

- E. Effective the first full pay period on or after July 1, 2010, the base salary for all bargaining unit members shall be increased by 3.5 percent.

Section 19.2 Salary Schedule

* * *

- D. Effective at the beginning of the first full pay period beginning on or after July 1, 2010, a Step P will be added at a rate 3.5% greater than the current Step O. All employees will then receive one service increment increase. The existing Step A will then be removed from the schedule, and the remaining 15 steps will be re-lettered A through O.

* * *

Article 54 – Tuition Assistance

* * *

Section 54.11

The County will increase the maximum annual allowance payable to a bargaining unit employee under the Employee Assistance Program to \$1,630 for FY 2009, \$1,730 for FY 2010, and \$1,830 for FY 2011.

* * *



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

April 12, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Fiscal Impact Statement¹ – FY11 Labor Agreements between Montgomery County Government and Municipal and County Government Employees Organization (MCGEO), Local 1994, and Fraternal Order of Police (FOP), Lodge 35

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2010 APR 14 AM 7:07

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. In addition, the Executive recommended that the governing boards of Montgomery County Public Schools, Montgomery College, and Maryland-National Capital Park and Planning Commission adopt a similar approach to compensation in their budgets. The tax supported cost of funding these provisions is noted in the attached table, which was originally published in the County Executive's recommended operating budget on March 15, 2010. Should the County Council approve these provisions, approximately \$46.2 million in additional tax supported resources would have to be identified to fund these improvements.

FY11 MCGEO Agreement

There are no economic provisions in the agreement that will create an additional fiscal impact on the County's operating budget in FY11.

FY11 FOP Agreement

The provisions noted below have an economic impact.

¹ The economic provisions contained in the third year of the existing agreement with the International Association of Fire Fighters (IAFF), Local 1664 was also included in the County Executive's transmittal package. The fiscal impact of this agreement was previously reported to the Council in the County Executive's FY09 Recommended Operating Budget, p. 8-17 and is attached to this memo.

Office of the Director

Nancy Floreen, President, County Council
April 12, 2010
Page 2

Article 5 Tech Pay: The agreement adds an expert level for multilingual pay of \$3.00 per hour worked for use in interrogations, investigations, and legal proceedings. The program is not currently operational (the appropriate test must be developed and officers would have to be certified at that level to receive the differential). However, if the program is operational by January 1, 2011, the cost could be \$12,950, assuming 10 officers are certified.

Article 24 Insurance Coverage and Premiums: The agreement provides an advanced payment of \$25,000 in the event of a line of duty death and provides a basic minimum benefit of \$500,000. The cost of providing this benefit is \$1,550. FY11 group insurance rates had already been determined by the time this provision was agreed to, but the cost will be reflected in the FY12 group insurance actuarial valuation.

Article 69 Flight Officers: The agreement adds a Pilot and Co-Pilot differential of \$3,500 per year and a Flight Officer and Observer differential of \$1,500 per year in the Police Aviation Unit. The unit is not currently operational. However, if the unit becomes operational and assuming two bargaining unit members become certified as pilots, the annual cost of this provision would be approximately \$10,100.

JFB:ae

Attachment

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Dee Gonzalez, Offices of the County Executive
- Joseph Adler, Director, Office of Human Resources
- Tom Manger, Chief, Montgomery County Department of Police
- John Cuff, Office of Management and Budget
- Lori O'Brien, Office of Management and Budget

Savings Plan, the GRIP, and the Montgomery County Deferred Compensation Plan. The Montgomery County Union Employees Deferred Compensation Plan is administered by the three unions representing Montgomery County employees. The Board currently consists of 13 trustees including: the Directors of Human Resources, Finance, Management and Budget, and the Council Staff; one member recommended by each employee organization; one active employee not represented by an employee organization; one retired employee; two members of the public recommended by the County Council; and two members of the general public.

Change In Retirement System Membership: As indicated in the table "Retirement Funds: Enrollment and County Contribution Rates" at the end of this narrative, the number of active non-public safety employees in the ERS declined, the number of active public safety employees increased, and the number of employees in the RSP increased.

Funds for the County's contribution to the ERS for each member employee are included in the appropriate County government departmental budget or agency budget. Budgeted ERS contribution rates are displayed in the table "Retirement Funds: Enrollment and Contribution Rates" at the end of this narrative and are based on a 40-year funding schedule, with the exception of the additional costs from the FY09 Retirement Incentive Program (RIP) which are being amortized on a 10-year schedule. The County uses multiple contribution rates designating the percentage of payroll for the various employee groups to determine the retirement contribution. These rates are determined annually by an actuarial valuation.

County contributions are determined using actuarially sound assumptions to assure the financial health of the Fund. Factors that affect the County's contributions include the impact of compensation adjustments, increases in the size of the workforce, investment returns, and collectively bargained benefit changes. The ERS contribution rates reflect projections of revenues and expenses to the fund. Revenues include member contributions which are set at fixed percentages of salaries and investment income which is driven by both earnings in the market and the size of the Fund balance invested.

Expenses of the Fund include pension payments which are affected by mandated cost-of-living increases and changes in the number of retirees and survivors; administrative and operational expenses of the Fund managers and financial consultants; and charges for services provided by County staff in the Board of Investment Trustees, Finance, and Human Resources.

The Executive and Municipal and County Government Employees Organization (MCGEO), Local 1994, agreed to seek legislation authorizing a retirement incentive program to coordinate with the anticipated reduction-in-force necessary to implement workforce reductions included in the Executive's FY11 recommended budget. Employees at normal retirement age or within two years of normal retirement will be eligible to receive the \$35,000 incentive. Unlike previously proposed retirement incentive programs, the FY11 program will be targeted to job classes affected by a reduction-in-force and will be limited to the number of anticipated layoffs in a particular job class. The program is intended to maximize budgetary cost reductions by encouraging the most senior employees to retire and minimize the number of potential layoffs.

COLLECTIVE BARGAINING

The County government is scheduled to negotiate new term agreements with all of its represented employee organizations and the association representing volunteer fire fighters during FY11 to be effective July 1, 2011

FY11 Compensation Improvements Potential Fiscal Impact (Tax Supported Costs Only)				
Agency/Bargaining Unit	Service Increment	GWA	Tuition Assistance ⁴	Total
FOP ¹	\$ 1,249,680	\$ -	\$ 454,455	\$ 1,704,135
Police Management	-	-	-	-
IAFF ²	995,030	8,481,150	58,569	9,534,749
Fire Management	3,810	591,740	-	595,550
MCGEO	2,598,050	-	321,788	2,919,838
Non-represented	725,890	-	96,336	822,226
MCVFRA	-	-	51,727	51,727
Total County Government	\$ 5,572,460	\$ 9,072,890	\$ 982,853	\$ 15,628,203
MCPS	25,908,503	-	-	25,908,503
Montgomery College	2,313,659	-	-	2,313,659
MNCPPC ³	900,700	1,411,900	-	2,312,600
Total All Tax Supported Agencies	\$ 34,695,322	\$ 10,484,790	\$ 982,853	\$ 46,162,965

Notes:

1. The FOP's award reflected in this table includes payment of a 3.5 percent service increment in FY11 and continuation of tuition assistance reimbursements.
2. FY11 is the final year of the current labor agreement with IAFF. The contract calls for a 3.5 percent general wage adjustment, a 3.5 percent pay plan adjustment, and a 3.5 percent service increment which are reflected in this table.
3. MNCPPC negotiated FY11 wage and service increment increases with its police and general government bargaining units.
4. Actual FY09 expenditures reflected for Tuition Assistance. Uniformed management included within Non-represented.

(FY12). For FY11, the Executive's recommended budget does not include funding for general wage adjustments, service increments, or tuition assistance for any employee.

The table to the previous page presents the potential cost to the County of funding compensation increases for employees of the County government and the independent agencies. Because these wage improvements are not affordable at this time and in light of the extraordinary measures taken to balance the FY11 budget, the Executive does not recommend, and has not included, these compensation improvements.

WORKFORCE ANALYSIS

Basis: Workforce Analysis has been performed on changes to tax supported and non-tax supported workyears (WYs) in the Executive's Recommended FY11 Operating Budget for the County government.

Overall changes are calculated in comparison to the Approved Personnel Complement for FY10, which began on July 1, 2009. Changes shown reflect such factors as the addition of grant-funded positions; abolishments and creations to implement approved job sharing agreements; technical adjustments to remove positions currently associated with "group positions" which can contain unlimited numbers of employees (temporary, seasonal, or contractual), but are defined by the amount of service in terms of workyears that they are to provide; and other miscellaneous changes. Changes recommended by the Executive for FY11 are in three categories: current year position changes due to supplemental appropriations or other actions, new fiscal year position changes scheduled to take effect July 1, 2010, and position changes scheduled for later in the fiscal year. In the latter case, the workyear change will be prorated for the portion of the year it is recommended.

Summary: The recommended budget includes funding for 8,612 full-time positions, a net decrease of 339 from the approved FY10 Personnel Complement of 8,951 full-time positions. Funding for 908 part-time positions is included, a net decrease of 31 positions from the approved FY10 Personnel Complement of 939 positions.

Tax supported workyears account for 82.4 percent of the County's total workyears. Total tax supported workyears will decrease to 7,414.1 WYs in FY11, a decrease of 688.8 WYs or 8.5 percent.

Total County government workyears will decrease to 9,001.5 WYs in FY11, a decrease of 747.9 WYs or 7.7 percent. When measured relative to population, total workyears per thousand population has also decreased, from FY10 (9.20 in FY11 compared to 10.09 in FY10).

Of the County's 7,414.1 tax-supported workyears proposed for FY11, Public Safety departments account for 50.1 percent, or 3,717.2 workyears. Public Safety workyears will decrease by 198.1 workyears, or 5.1 percent from FY10 levels. Detailed below are the significant net changes in the number of tax-supported workyears in the FY11 Recommended Budget.

Workforce Changes (Tax Supported)	WYs
• Public Libraries: service hour reductions, staff reductions for the Gaithersburg renovation, and vacancy abolishments	-86.6
• Fire and Rescue Service: further civilianization of Public Safety Communication Center, public intern abolishments, and lapse increase	-79.5
• Police: position reductions in Traffic and Community Policing, education facilities, and fingerprinting divisions	-62.5
• Recreation: eliminate, reduce, and restructure programs; eliminate all Principal Administrative Aide positions	-56.8
• Correction and Rehabilitation: abolish sworn and civilian positions in a number of functions	-42.5
• Transportation: funding shifts and the elimination or reduction of programs	-42.0
• Technology Services: abolished positions in a number of different functions	-30.5
• General Services: position abolishments, largely focused in the carpentry, building services inspection, and management services functions	-18.1
• County Executive: reduced Volunteer Center staffing, clerical staff, and funding shifts	-14.7

**International Association of Fire Fighters, Local 1664
Fiscal Impact Statement**

<u>Article</u>	<u>Item</u>	<u>Description</u>	<u>FY09</u>	<u>FY10</u>	<u>FY11</u>
17.1	Assignment Pay	Primary and backup scheduler differential effective July 2008	\$8,870	\$67,180	\$67,180
		Hazardous materials, breathing apparatus technician certification, fire code, fire investigation, urban search and rescue, swift water rescue, and scheduler assignment pay increase to \$1,837 July 2009			
17.2	Special Pay Differentials	EMT and CRT certification pay and hourly differentials. CRT/CRT-I: \$4,515; EMT-P - \$6,080 (0-4 years), \$7,391 (5-8 years), \$8,701 (8+ years); hourly differentials increase by \$2.00 July 2010	-	-	199,670
19	Wages	GWA and service increments. 2% July 2008; 2% January 2009; 4% New longevity adjustment at 28 years of service July 2009	4,282,840	10,597,550	18,968,710
20	Insurance	Paygo impact: County contribution fixed to 80% of standard option (employee may buy-up at their own cost), restrict generics, incentivize mail order; high option copayments remain \$4/\$8	(108,260)	(216,510)	(216,510)
		OPEB impact: \$2.4 million reduction in the AAL	-	(128,570)	(162,860)
51	Pensions	Expansion of the list of illnesses for which an employee is automatically entitled to a service-connected disability retirement (\$1.6 million increase in AAL)	-	199,000	199,000
54	Tuition Assistance	Increase the maximum allowable \$100 each fiscal year to \$1,630, \$1,730, and \$1,830 in FY09 through FY11, respectively	5,910	11,830	13,720
57	ECC	Increase ECC certification pay to \$2,000 annually beginning July 2009	-	19,380	19,380
22	Prevailing Rights	Bottled water provided at each station	30,000	30,000	30,000
Side Letter	Drug Testing	Random drug testing	15,000	15,000	15,000
Side Letter	Parking	Worksite parking improvements	31,500	31,500	31,500
Total			\$4,265,860	\$10,930,270	\$19,468,700

**Fire and Rescue Service Management
Fiscal Impact Statement**

<u>Item</u>	<u>Description</u>	<u>FY09</u>	<u>FY10</u>	<u>FY11</u>
Wages	GWA and service increments. 2% July 2008; 2% January 2009; 4% July 2009; 3.5% July 2010; schedule adjustment July 2010	\$250,150	\$679,530	\$1,285,300
	New longevity adjustment at 28 years of service July 2009	-	152,430	152,430
Insurance	Paygo impact: County contribution fixed to 80% of standard option (employee may buy-up at their own cost), restrict generics, incentivize mail order; high option copayments remain \$4/\$8	(4,870)	(9,750)	(9,750)
Pensions	Expansion of the list of illnesses for which an employee is automatically entitled to a service-connected disability retirement (\$89,000 increase in AAL)	-	9,000	9,000
Drug Testing	Random drug testing	530	530	530
Total		\$245,810	\$831,740	\$1,437,510



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

2009 MAY -4 PM 4:12

MONTGOMERY COUNTY
RECEIVED

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 33-85), 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.

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/eb1
A09-00708
M:\Cycorn\Wpdocs\D028\P005\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.

Collective Bargaining Agreement Items Subject to Council Approval


Bargaining Unit	Item	Origin	Executive Recommendation	Fiscal Impact	Required Legislation
FOP	3.5% service increment	Arbitrator decision	No funding	\$1.2 million	None
FOP	Tuition Assistance	Arbitrator decision	No funding	\$454,455	None
FOP	Multilingual expert skill level	Agreement	Funded	\$12,950	None
FOP	Extra pay – Police Aviation Unit	Agreement	Funded	\$10,100	None
FOP	BIT Representative	Agreement	Submitted Legislation.	\$0	Yes, but not introduced yet.
MCGEO	RIP	Agreement	E-Bill 9-10	Savings over 10 years if no positions are refilled for 3 years. ¹	Yes. E-Bill 9-10 enacted on 4/27/10
IAFF	3.5% GWA, 3.5% pay plan adjustment, 3.5% service increment	Agreement	No funding	\$18.97 million	None
IAFF	Increased special pay for EMT & CRT certification	Agreement	Funded	\$199,670	None
IAFF	Increased Tuition Assistance	Agreement	No funding	\$58,569	None
FOP, IAFF, MCGEO	Continuation of Ghost GWA	Agreement	3/15 Budget – funded 4/22 Budget – not funded	\$7.025 million	Required to limit funding to FY10. E-Bill 16-10.

¹ OLO estimated a savings of \$8.7 million over 10 years if no positions are refilled for 3 years, but estimated a loss of \$5.6 million over 10 years if the positions are refilled in the next 2 years.

MEMORANDUM

April 22, 2010

TO: Management & Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Council's Action on the Imputed Compensation Law

The Committee requested a legal opinion at its April 19 meeting on the authority of the Council to reject funding for the ghost GWA as part of its review of the collective bargaining agreements.¹ County Code §33-108(g) requires the Executive to submit the following portions of a collective bargaining agreement with MCGEO to the Council for approval:

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.* (emphasis added)

Under Code §33-108(j), if the Council indicates its intent to reject an item subject to its review, the Council must designate a representative to explain its views during any renegotiation of the rejected item between the union and the Executive.² The union and the Executive have 10 days from the date of the Council's resolution indicating its intent to reject an item to renegotiate the item and resubmit it to the Council for approval.

The ghost GWA was a new provision in each of the 3 "concession agreements" negotiated with the 3 County unions last year. The FOP and the MCGEO Agreements were scheduled to expire on June 30, 2010. The Executive agreed with each of these unions to extend the agreement until June 30, 2011 with some amendments. The IAFF Agreement is a 3-year agreement that expires on June 30, 2011. Although none of the 3 agreements submitted by the Executive to the Council on April 14 contain a new provision about the ghost GWA, each "concession agreement" negotiated last year provides that salary-based employee benefits must

¹ Attached please find a legal primer prepared by the County Attorney's Office in May 2009 describing the Council's role in the collective bargaining process.

² The collective bargaining laws for police and fire contain similar, but not identical language.

not be diminished due to the failure to receive the FY10 GWA. Expedited Bill 18-09, enacted on May 13, 2009 and signed into law on May 21, 2009, amended the County retirement laws to implement this ghost GWA. The Council must appropriate an additional \$7.2 million as part of the County's FY11 contribution to the ERS Trust Fund to continue the ghost GWA beyond FY10.³ Although Bill 18-09 required this additional payment in FY11 and beyond, each budget requires a new appropriation of funds. Therefore, the Council must decide whether to fund this provision beyond FY10 as part of its action on the FY11 Budget.

If the Council adopts a resolution indicating its intent not to fund the continuation of the ghost GWA beyond FY10, it must designate a representative to meet with the parties during any renegotiation of this item as required by §33-108(j). The Council had to amend the County retirement laws to implement the ghost GWA because the County retirement plans are established in the County Code. The retirement laws require an ERS benefit to be calculated based upon actual earnings. The ghost GWA modified this law by requiring the calculation of FY10 earnings based upon a GWA that was never received. A Council decision not to fund the continuation of the ghost GWA beyond FY10 would result in a reduced employer contribution to the ERS Trust Fund in the approved FY11 operating budget, but it would not change the way a participant's retirement benefit is calculated. Legislation, such as Expedited Bill 16-10, must be enacted to implement a Council decision not to fund the ghost GWA beyond FY10.⁴

I am, of course, available to discuss this matter with the Committee at its earliest convenience.

³ This estimate was calculated by the Council's actuary. We have not yet received an estimate of the savings from the Executive Branch.

⁴ Expedited Bill 16-10 would retain the ghost GWA when calculating regular earnings for FY10, but it would eliminate the use of the ghost GWA when calculating a participant's regular earnings for FY11 and beyond. Therefore, a participant would continue to benefit from the ghost GWA only if FY10 is one of the years used to calculate average final earnings when determining a participant's pension benefit.



056246

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

April 23, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director *JFB*

SUBJECT: Expedited Bill 16-10 – Imputed Compensation Limit

2010 APR 26 AM 8:55

RECEIVED
MONTGOMERY COUNTY
COUNCIL

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

LEGISLATION SUMMARY

Expedited Bill 16-10 limits the effect of legislation the Council adopted last year as part of the wage concession agreements with the County's three employee organizations. Those agreements required the calculation of regular earnings used to determine a retirement benefit include the FY10 general wage adjustment that was not paid in FY10. The expedited bill amends the Employees' Retirement System to limit the effect of imputed compensation on the calculation of regular earnings to FY10 only.

FISCAL SUMMARY

The legislation is expected to reduce retirement system costs because the permanent benefit enhancement approved last year would instead be a one-time improvement limited to FY10 only. The attached letter from the plan actuary, Mercer Consulting, outlines the assumptions used to estimate the cost savings of between \$7.1 million and \$7.5 million. As the plan actuary notes, cost savings will change over time due to experience and the ultimate savings will depend on the pattern of future pay increases and the timing of plan members' retirement. The County Executive's budget adjustment package transmitted on April 22, 2010 assumes tax supported savings of \$6.6 million and non-tax supported savings of \$424,510 related to this legislation. The detailed allocation of these reductions across all departments has been transmitted separately to Council staff.

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

The following contributed to and concurred with this analysis: G. Wesley Girling, Office of Human Resources, Alex Espinosa and Lori O'Brien, Office of Management and Budget.

JFB:ae

Attachment

c: Joseph Adler, Director, Office of Human Resources
Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
G. Wesley Girling, Office of Human Resources
Alex Espinosa, Office of Management and Budget
Lori O'Brien, Office of Management and Budget

MERCER



MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

Douglas L. Rowe, FSA, MAAA, EA
Principal

120 East Baltimore Street, 20th Floor
Baltimore, MD 21202-1674
+1 410 347 2806
Fax +1 410 727 3347
doug.rowe@mercer.com
www.mercer.com

Confidential
Via Electronic Mail

Mr. Wes Girling
Montgomery County Government
101 Monroe Street, Seventh Floor
Rockville, MD 20850-2589

April 21, 2010

Subject: Expedited Bill 16-10 – Imputed Compensation Limit

Dear Wes:

This letter summarizes the savings calculations you requested for the imputed compensation limit bill. The calculations are based on the July 1, 2009 actuarial valuation data for groups A, E, F, G and H members. The actuarial assumptions and methods and plan provisions are the same as those used in our July 2009 actuarial valuation report except for the assumptions and provisions noted below.

By cost/savings, we mean the change in Normal Cost and an amortization of any changes in unfunded liability unless otherwise indicated. Cost/savings will change over time as experience develops. Please note that actual ultimate savings of the imputed compensation will depend on the pattern of future pay increases and the timing of plan members' retirement. For example, there will be no savings for anyone who retires on or before July 1, 2010. The maximum savings will be realized for any member who retires at a time when his/her average final earnings exceeds his/her average final earnings at July 1, 2010.

We have based the savings on the July 1, 2009 valuation date assuming that the County would prefer to recognize the savings in FY2011. However, recognizing the savings from this bill without recognizing the cost of the Retirement Incentive Plan/Discontinued Service Pension in the same period may be an issue with the County's auditor and/or bond rating agencies.

Other Considerations

We have recommended that the County consider a shorter amortization period for future plan improvements in order to restore the funded ratio more quickly following a benefit improvement and in order to better align the cost of the improvement with the service of participants receiving an increase for service already performed. Applying that concept to this change might result in a 10 to 20 year amortization period. We show detailed results below for the County's traditional 40-year amortization period. Amortizing this savings over a shorter period than the amortization for last year's bill which adopted imputed compensation would be questionable.

MERCER



MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

Page 2

April 21, 2010

Mr. Wes Girling

Montgomery County Government

The dollar impact of the Normal Cost decrease on the County's contribution will tend to increase as employees near retirement, but decrease as the number of affected employees decreases over time. Please let me know if you would like a projection to quantify this pattern. Everything else being equal, the savings impact will increase (decrease) if actual future pay increases exceed (trail) assumed pay increases. The amortization payment will remain level for the chosen period – 40 years unless a shorter period is chosen.

Plan Provisions

The 4.50% (for Groups A, E and H), 4.25% (for Group F) and 4.00% (for Group G) imputed compensation increases that were adopted last year for employees on July 1, 2009 would only apply to earnings for FY2010.

Estimated Savings for Proposed Change

- Annual savings using 40-year amortization for represented and non-represented members: \$7.1 to 7.5 million
- Reduction in Actuarial Accrued Liability for represented and non-represented members: \$55-58 million

Assumptions

No savings will be realized by employees in the Optional Non-Integrated or Optional Integrated Plan because they will retire when FY2010 pay affects their Average Final Earnings.

5% to 10% of the value of benefits for Mandatory Integrated employees will be paid based on FY2010 pay, thus not producing savings.

Mercer has prepared this letter exclusively for the Montgomery County Government for the purpose of illustrating the contribution reduction for the proposed bill. This letter may not be used or relied upon by any other party or for any other purpose. Mercer is not responsible for the consequences of any unauthorized use.

This letter includes projections of future funding costs and/or benefit related results. To prepare these projections, various actuarial methods and assumptions, as described above and in our 2009 actuarial valuation report, were used to project two scenarios from a range of possibilities. However, the future is uncertain, and the system's actual experience will

MERCER



MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

Page 3
April 21, 2010
Mr. Wes Girling
Montgomery County Government

likely differ from the assumptions utilized and the scenarios presented; these differences may be significant or material. In addition, different assumptions or scenarios may also be within the reasonable range and results based on those assumptions would be different. This report has been created for a limited purpose, is presented at a particular point in time and should not be viewed as a prediction of the system's future financial condition.

Because actual plan experience will differ from the assumptions, decisions about benefit changes, investment policy, funding amounts, benefit security and/or benefit-related issues should be made only after careful consideration of alternative future financial conditions and scenarios and not solely on the basis of a valuation report or reports.

This letter is based on data provided by the County and plan provisions as described in our 2009 actuarial valuation report. The County is solely responsible for the validity, accuracy and comprehensiveness of this information. If the data or plan provisions supplied are not accurate and complete, the valuation results may differ significantly from the results that would be obtained with accurate and complete information; this may require a later revision of this letter.

The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.

Please let me know if you have any questions or need any further information. I can be reached at 410 347 2806. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this letter. I am not aware of any direct or material indirect financial interest or relationship, including investments or other services that could create a conflict of interest that would impair the objectivity of our work

Sincerely,

A handwritten signature in cursive script that reads "Douglas L. Rowe".

Douglas L. Rowe, FSA, MAAA, EA
Principal

g:\wp51\ldb\mgewas\imputed compensation (bill 16-10).doc