



Labor Agreements with Montgomery County Police Officers

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Labor Agreements with Montgomery County Police Officers

OLO Report 2021-1

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Introduction

The County Council asked the Office of Legislative Oversight (OLO) to prepare a report that describes the terms and conditions of the County Government’s collective bargaining agreement (CBA) with County police officers. In Montgomery County, police officers are represented for collective bargaining purposes by the Fraternal Order of Police, Montgomery County Lodge 35, Inc. (FOP or FOP Lodge 35).

The collective bargaining agreement between the County Government and FOP Lodge 35 that is available on the County’s website is over 100 pages long.¹ In addition to the main CBA document, for this project the County Government provided OLO with 23 “Appendix” documents and dozens of “side letters,” “and “memoranda of agreement” (MOA) related to the collective bargaining agreement.

In this report:

- **Chapter 1** describes the laws that establish collective bargaining rights for police officers, processes related to developing a CBA, and other relevant County and State laws;
- **Chapter 2** describes the documents that make up the collective bargaining agreement and the lack of clarity surrounding those documents;
- **Chapter 3** summarizes the provisions in the CBA between the County and the FOP;
- **Chapter 4** describes difficulties with the CBA that prevent third-party readers (like the Council) from being able to identify all terms and requirements of the CBA that currently are in effect; and
- **Chapter 5** provides OLO’s recommendations to the Council.

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¹ https://www.montgomerycountymd.gov/HR/Resources/Files/Labor/FOP_2019_2020_AGREEMENT.pdf

Chapter 1. Legal Background

In the most generic sense, collective bargaining is the coming together of representatives of employees and employers (management) to negotiate the terms and conditions of employment. Issues that are typically discussed and negotiated in collective bargaining include: wages, benefits, working conditions, and workplace rules. Agreements that result from the collective bargaining process are generally written down in a collective bargaining agreement (CBA) - a contract signed by the employees' representative and management that governs the relationship between employees and the employer for a certain period of time.

The federal National Labor Relations Act (NLRA), passed by Congress in 1935, outlines basic rights of workers and employers in the private and nonprofit sectors and grants virtually all nonsupervisory employees in these sectors the right to join together in unions and to bargain collectively.

Federal law, however, does not address or provide collective bargaining rights for public sector employees – which typically are governed by state and/or local law. Maryland State law established collective bargaining rights only for teachers. The collective bargaining rights of other public sector employees in Maryland, including police, are subject to laws enacted by County or municipal jurisdictions.

In the November 1980 general election, County voters approved a ballot question sponsored by a group of police officers that added a new section to the County Charter requiring the Council to enact a collective bargaining law for police officers with binding arbitration. In April 1982, the Council adopted the Police Labor Relations law (Bill 71-81), which established the basic collective bargaining process for the County Government and an authorized representative for police officers.²

In 1982, both the County Executive and the Council supported limiting eligibility for collective bargaining representation of police officers to non-supervisory employees.³ Accordingly, the 1982 police collective bargaining law limited representation in a collective bargaining unit to police officers below the rank of sergeant. In 2000, Bill 10-00 expanded the bargaining unit to include police sergeants.

The County Charter and County Code define the basic standards and requirements of the County's collective bargaining process, including those relating to:

- Which employees have the right to representation for collective bargaining;
- What matters are subject to or excluded from collective bargaining;
- Elections of employee organizations to represent employees in collective bargaining;
- The process for resolving disputes that arise during collective bargaining; and
- The roles of the County Executive and the County Council.

² The law is codified at Montgomery County Code (MCC) §§ 33-75 to 33-85.

³ See OLO Report 2009-5, *Collective Bargaining Laws in Montgomery County: A Legislative History*, at p. 13 (Dec. 2, 2008). <https://montgomerycountymd.gov/olo/resources/files/2009-5.pdf>

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Employees in the bargaining unit hold an election to choose a certified representative to represent the bargaining unit in negotiations with the County Government.⁴ In Montgomery County, the Fraternal Order of Police Lodge 35 represents police officers in the bargaining unit.

A. Subjects of Collective Bargaining

The Police Labor Relations Law states that the County Government must bargain over:

- Salary and wages,
- Pension and retirement benefits for active employees only,
- Employee benefits (e.g., insurance, leave, holidays, vacation),
- Hours and working conditions, including the availability of personal patrol vehicles,
- Provisions to process and settle grievances concerning the interpretation and implementation of the CBA,
- Matters affecting the health and safety of employees,
- Amelioration of the effect on employees when the employer's exercise of rights causes a loss of existing jobs in the unit.⁵

B. Employer Rights and Topics Excluded from Collective Bargaining

The Police Labor Relations law and other bills enacted by the Council also identify subjects that are not subject to collective bargaining. Some subjects are identified in a section of the Labor Relations Law titled "Employer rights."⁶ In other cases, an enacted bill will specifically state that the subject matter of the bill or the implementation of the bill is not subject to collective bargaining. Examples of such bills include Bill 45-10 on disability retirement, enacted in June 2011 and Expedited Bill 27-20 on the use of force by police officers, adopted in July 2020.⁷

The employer rights outlined in the Police Labor Relations law that are not subject to collective bargaining include the rights to:

- Determine the budget and mission of the County Government and any agency of County Government;

⁴ MCC § 33-79.

⁵ MCC § 33-80(a).

⁶ MCC § 33-80(b).

⁷ See, Expedited Bill 27-20, "Police – Regulations – Use of force Policy" (enacted July 29, 2020) (requiring the Police Chief to issue a policy directive establishing permissible use of force by police officers, establishing the minimum standards required for use of force, and indicating that the policy adopted by the Police Chief is not subject to collective bargaining) https://apps.montgomerycountymd.gov/ccllims/DownloadFilePage?FileName=2666_1_10868_Bill_27-20E_Signed_20200810.pdf; Bill 45-10, "Personnel – Disability Retirement – Eligibility – Total and Partial Incapacity," Section 2 (enacted June 28, 2011) (indicating that the implementation of the provisions of the bill amending disability retirement programs "is not subject to collective bargaining with a certified representative of employees in any bargaining unit."). https://apps.montgomerycountymd.gov/ccllims/DownloadFilePage?FileName=754_1_3356_Bill_45-10_Signed_20120701.pdf

- Maintain and improve efficiency and effectiveness of operations;
- Determine the services offered and operations performed by the County Government;
- Determine the overall “structure, methods, processes, means, job classifications or personnel by which operations are to be conducted and the location of facilities;”
- Direct and supervise employees;
- Hire, select, and establish standards for promotion of employees and classification of positions;
- Relieve employees from duty due to lack of funds or work or when the employer determines continued would be inefficient or nonproductive;
- Make and enforce rules and regulations not inconsistent with the law or a collective bargaining agreement;
- Take actions to carry out the mission of government in emergency situations; and
- To transfer, assign and schedule employees.⁸

The County Code indicates that the County Government can “voluntarily ... discuss with the representatives of its employees any matter concerning the employer’s exercise of” employer rights but that those rights are not subject to collective bargaining.⁹

C. Coming to Agreement

During the collective bargaining process, County Government and FOP representatives discuss proposals by each side that are within the subjects of collective bargaining, listed above. Examples range from the amount of salary increase in future years to the clothing and gear that the County will provide officers to the use of County recreation and exercise facilities by officers.

In any year that the County Government and the FOP bargain, the parties choose an “impasse neutral” – a person who will try to mediate disagreements over contract provisions during the bargaining process and, if mediation is unsuccessful, the impasse neutral will choose the final proposal that will constitute the parties’ collective bargaining agreement. To reach that point, both the County Government and the FOP each provide the impasse neutral a final written offer stating each parties’ position on every disputed item in the bargaining process. The impasse neutral is required to choose, in the impasse neutral’s judgment, the “more reasonable” of the final offers, which, along with all provisions that the parties did agree to, will be deemed the final agreement between the parties.¹⁰ The County Code outlines how the impasse neutral must determine the “more reasonable” offer:

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

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

⁸ MCC § 33-80(b).

⁹ MCC § 33-80(c).

¹⁰ MCC § 33-81(b).

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- i. the limits on the County's ability to raise taxes under State law and the County Charter;
 - ii. the added burden on County taxpayers, if any, resulting from increases in revenues needed to fund a final offer; and
 - iii. the County's ability to continue to provide the current standard of all public services.
- (B) After evaluating the ability of the County to pay under subparagraph (A), the impasse neutral may only consider:
- i. the interest and welfare of County taxpayers and service recipients;
 - ii. past collective bargaining contracts between the parties, including the bargaining history that led to each contract;
 - iii. a comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland;
 - iv. a comparison of wages, hours, benefits, and conditions of employment of other Montgomery County employees; and
 - v. wages benefits, hours and other working conditions of similar employees of private employers in Montgomery County.¹¹

The Police Labor Relations Law states that any CBA becomes effective only after it has been ratified by the employer and the certified representative (exception for provisions selected by an impasse neutral).¹²

D. Required Council Review and Funding of Collective Bargaining Agreements

The County Code requires the County Council to review any terms or provisions in the CBA that require an appropriation of funds or that require a change to County law.¹³ The Council has the authority to either accept the proposals that require the appropriation of fund or reject them. If the Council rejects a provision in a CBA that requires funding, it must state its reasons for doing so.¹⁴ The County Code requires the CBA to provide either for the automatic reduction or elimination of wage or benefit adjustments if the Council does not take action required to implement the agreement or if the Council does not appropriate sufficient funds.¹⁵

¹¹ MCC § 33-81(b)(5).

¹² MCC § 33-80(f).

¹³ MCC § 33-80(h).

¹⁴ Ibid.; see also Memorandum from Robert Drummer, Senior Legislative Attorney, to the County Council (April 30, 2020) (Council Agenda Items 4A, B, and C) (explaining the process for Council review of collective bargaining agreements). https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2020/20200505/20200505_4A-C.pdf

¹⁵ MCC § 33-80(i).

In practice, the Executive historically has submitted to the Council during the annual operating budget review documents that only include changed language agreed upon by the Executive and the FOP. The Executive does not provide the Council with a complete copy of each CBA with the agreed-upon changes.¹⁶

E. Other Laws

In addition to the Police Labor Relations law, other state and County laws impact topics that are identified as subjects of collective bargaining. Retirement benefits and disability retirement benefits for County employees, including police officers, are codified in the County Code. Procedures regarding the investigation and discipline of officers is codified in state law in the Law Enforcement Officer Bill of Rights. From a legal perspective, County and State law supersede the provisions of a collective bargaining agreement in the County. If a provision of law is different from language in a collective bargaining agreement, the law controls.

1. Retirement Benefits

Retirement benefits for police officers are set out in the Montgomery County Code (MCC).¹⁷ The code establishes the minimum age and number of years of service to qualify for retirement, the size of the retirement benefit, and other requirements related to retirement. Many components of the retirement benefits are arrived at through the collective bargaining process. If collective bargaining results in changes to retirement, the County Executive will propose legislation to amend the County Code to reflect the changes; the Council needs to adopt the legislation for the change to become effective.

2. Disability Retirement Benefits

The County Government also provides disability-related retirement benefits for employees who become incapacitated while they are County Government employees. These benefits are also outlined in the County Code and apply to police officers represented by the FOP.¹⁸ As with general retirement benefits, the code establishes the requirements to qualify for disability retirement benefit, procedures related to receiving benefits, and the amount of benefits. In 2011, the County Council passed Bill 45-10, which amended disability retirement benefits. In the bill, the Council expressly stated that the implementation of any part of the bill was not subject to collective bargaining.¹⁹

3. Law Enforcement Officers' Bill of Rights

The Law Enforcement Officers' Bill of Rights (LEOBR) is a state law that outlines procedures for the discipline of most law enforcement officers in Maryland who are authorized to make arrests, including state, County, and municipal police officers, officers in various state agencies (e.g., the Maryland

¹⁶ See, e.g., https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2020/20200505/20200505_4A-C.pdf at © A-3 through A-6 and A-9 through A-23.

¹⁷ MCC § 33-34 et seq.

¹⁸ MCC § 33-43 et seq.

¹⁹ Bill 45-10, "Personnel – Disability Retirement – Eligibility – Total and Partial Incapacity," at Section 2 (enacted June 28, 2011). See link to final bill at

<https://apps.montgomerycountymd.gov/ccllms/BillDetailsPage?RecordId=754&fullTextSearch=45-10>.

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Transportation Authority, the Bureau of the Comptroller), and officers at various colleges and community colleges in the state.²⁰ The LEOBR supersedes any state, county, or municipal law that conflicts with it.²¹

Among other things, the LEOBR:

- Does not allow law enforcement agencies to prohibit secondary employment by officers;
- Prohibits discipline and other actions against officers (1) who request rights under the LEOBR; (2) who lawfully exercise constitutional rights; (3) or who disclose information about government mismanagement and waste, “substantial and specific dangers to public health or safety,” or violations of law by other law enforcement officers.²²

The LEOBR also established requirements and procedures surrounding the investigation or interrogation of a law enforcement officer that “may lead to disciplinary action, demotion, or dismissal.” If an investigation or interrogation of an officer results in a recommendation of punitive action (e.g., demotion, dismissal, transfer, etc.), the officer may request a hearing by a hearing board. The LEOBR also outlines procedures for conducting these hearings.

The next table summarizes rights established in the LEOBR.

Summary of Provisions in the Maryland Law Enforcement Officers’ Bill of Rights

Investigation or interrogation of an officer

- An officer under investigation must be given the name, rank, and command of (1) the officer in charge of the investigation, (2) the interrogating officer, and (3) each individual present during an interrogation.
- An officer under investigation must be given notice in writing of the nature of the investigation.
- If an officer is under arrest or likely to be placed under arrest due to the interrogation, the officer shall be informed of all the officer’s rights before interrogation begins.
- Interrogation of an officer:
 - Interrogation must be conducted at a reasonable hour, preferably when the officer is on duty, unless immediate interrogation is required; interrogation must be for a reasonable period of time.
 - All questions to the officer must be asked by one interrogating officer during any session of interrogation.

²⁰ Md. Code Ann., Public Safety § 3-101 et seq. The most recent version of the LEOBR (from 2019) can be found here: <https://govt.westlaw.com/mdc/Browse/Home/Maryland/MarylandCodeCourtRules?guid=N54A416F09CC211DB9BCF9DAC28345A2A&transitionType=Default&contextData=%28sc.Default%29>

²¹ Md. Code Ann., Public Safety § 3-102.

²² Md. Code Ann., Public Safety § 3-103.

Investigation or interrogation of an officer

- An officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.
- An officer under interrogation has a right to counsel or “another responsible representative” who can be present and available for consultation at all times during the interrogation.” An officer can wave this right.
- An interrogation may be suspended for up to five business days for an officer to obtain representation (law enforcement agency Chief can extend this time).
- An officer’s counsel or representative (1) may ask for recess of an interrogation at any time to consult with the officer, (2) may object to any questions asked, and (3) may state on the record the reason for the objection outside the presence of the officer under interrogation.
- A “complete record” must be kept of an “entire” interrogation, including recess periods, and may be “written, taped, or transcribed.”
- The officer under investigation or his/her counsel may request a copy of the record of interrogation after completion of the investigation and the record must be made available at least 10 days before a hearing.

Individuals authorized under the LEOBR to investigate or interrogate an officer

- A sworn law enforcement officer.
- The Attorney General (or designee) if requested by Governor.

Administration of blood alcohol tests; blood, breath, or urine tests for controlled dangerous substances; polygraph examinations, or interrogations

- A law enforcement agency may order an officer under investigation to submit to blood alcohol tests; blood, breath, or urine tests for controlled dangerous substances; polygraph examinations, or interrogations “that specifically relate to the subject matter of the investigation.”
 - A law enforcement agency may initiate an action that may lead to a punitive measure if an officer refuses to submit to a test, examination, or interrogation.
 - The results of any test, examination, or interrogation “are not admissible or discoverable in a criminal proceeding against the law enforcement officer.”
 - The results of a polygraph examination may not be used as evidence in an administrative hearing unless the law enforcement agency and the officer agree to the admission of the results.
 - An officer’s counsel or representative does not need to be present for the administration of a polygraph examination if (1) the officer, counsel, or representative review the questions to be asked before administration of the examination; (2) the counsel or representative is allowed to observe the administration of the examination; and (3) a copy of the final examination report is made available to the officer, counsel, or representative within 10 days of completing the exam.
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Hearings

- If an investigation or interrogation of an officer results in a recommendation of punitive action (e.g., demotion, dismissal, loss of pay, etc.), the officer is entitled to a hearing on the issue by a hearing board of the law enforcement agency that takes the action.
- Officers convicted of a felony are not entitled to a hearing.
- A hearing board must have at least three voting members who had no part in the investigation or interrogation of the officer.
- Hearing board members are appointed by the chief of the law enforcement agency.
- At least one member of a hearing board must be the same rank as the officer against whom the complaint is filed.
- A hearing board may also include a nonvoting member of the public who has received training by the Maryland Police Training and Standards Commission on the LEOBR and police procedure.
- If allowed by local law, a hearing board may include up to two voting or nonvoting public members.
- A union may negotiate an alternative hearing board structure for its members. (Note: Montgomery County and FOP Lodge 35 have negotiated an alternative hearing board structure.)
- Both the chief of a law enforcement agency and the officer subject to a complaint may issue subpoenas to compel attendance and testimony under oath at a hearing and production of documentary evidence.
- Hearings are open to the public unless a chief finds there is good cause to close a hearing (e.g., protect a confidential informant, undercover officer, or child witness).
- The law enforcement agency and the officer may be represented by counsel at a hearing.

Enforcement of LEOBR Rights

- An officer can ask a circuit court to enforce the officer's right if an officer is denied a right under the LEOBR.

Timing of Charges

- Administrative charges against an officer must be brought within one year after an appropriate law enforcement agency official learns of the act(s) giving rise to the charges.
- The one-year limitation does not apply to charges related to criminal activity or excessive force.

Allegations of Brutality in an Officer's Execution of Duties

- In cases with an allegation of brutality in an officer's execution of duties, the LEOBR prohibits investigation of a complaint unless:
 - A complaint is signed and sworn to, under penalty of perjury by (1) an aggrieved individual, (2) member of the aggrieved individual's "immediate family," (3) an individual with firsthand knowledge obtained because the individual was "present at and observed the alleged incident" or has an unaltered video recording of the incident, or (4) the parent or guardian of a minor child.
 - A complaint is filed within 366 days of an alleged incident.

Maintaining List of Officers for Disclosure as Impeachment or Exculpatory Evidence in a Criminal Case

- A law enforcement agency may maintain a list of officers found or alleged to have committed acts bearing on credibility, integrity, honesty, or other characteristics that would constitute exculpatory or impeachment evidence.
- A law enforcement agency cannot take punitive action against an officer solely because the officer is on such a list.
- A law enforcement agency must give notice to officers whose names are places on the list and the officer has the right to appeal.

Source: Md. Code Ann., Public Safety § 3-101 et seq.

F. Implementing the Collective Bargaining Agreement

The Police Labor Relations Law creates the position of “permanent umpire” – an individual appointed by the County Executive and approved by the County Council to a five-year term who has responsibility for “the effective implementation and administration of” the sections of County law governing (1) the selection, certification, and decertification of an employee organization to represent the bargaining unit, and (2) prohibited practices.²³ County law authorizes the permanent umpire to hold hearings, examine witnesses under oath, compel the attendance of witnesses and production of documents, and take testimony and receive evidence in an effort to resolve these grievances.²⁴

Chapter 2 describes the current status of the collective bargaining agreement between the County Government and FOP Lodge 35.

²³ MCC § 33-77(a).

²⁴ MCC §§ 33-77(a)(3), (5).

Chapter 2. The Collective Bargaining Agreement

A Note on the Information in This Report

Office of Legislative Oversight staff researched and wrote this report in the Fall of 2020. An OLO report becomes publicly available once the County Council votes to receive the report and release it publicly. Before finalizing a report, OLO shares a confidential draft with stakeholders for technical review (asking for suggested edits, clarifications, or identification of mistakes) and with a request for written comments on the report's findings and recommendations.

The Council has scheduled this report for receipt and release on January 19, 2021. On Monday, December 14, 2020, OLO sent a draft of the report to the Executive Branch and to FOP Lodge 35 asking them to review the report and to provide both technical edits and written comments by Friday, January 8, 2021. When OLO sent this report for review in December 2020, the parties did not have a signed collective bargaining agreement and had not had a signed agreement for many years.

On January 9, 2021, OLO received written comments on the report's findings and recommendations from the County's Chief Administrative Officer (CAO). In those written comments, the CAO reported that it was no longer accurate that "the County and the Fraternal Order of Police (FOP) have been unable to agree upon a unified collective bargaining agreement." Along with the written comments, Executive Branch staff sent OLO a written, but unsigned CBA, and stated that the Council would receive a signed version of the document in the coming week. See Appendix D.

The text of this report reflects the status of the collective bargaining agreement with the FOP as of the end of the first week of January 2021. When OLO finalized this report on January 13, 2021, the Council had yet to receive a signed copy of the collective bargaining agreement for FY21-FY23 and the FY20 collective bargaining agreement was still the most recent document posted on the County's website. By the time the Council considers this report, an FY21-FY23 collective bargaining may be signed.

Together, the Police Labor Relations Law, the collective bargaining agreement between the County and the FOP, memoranda of agreement and side letters between the County and the FOP, internal Montgomery County Police Department (MCPD) department policies as reflected in Headquarters Memoranda and Function Codes, and other relevant County and State laws, guide the day-to-day operations of MCPD, the actions of police officers when they are on- and off-duty, and processes and procedures for settling disagreements between the County and the FOP over the terms of the CBA. For this report, the County Council asked OLO to describe the provisions in the current collective bargaining agreement.

Ultimately, a collective bargaining agreement is a contract – an agreement between parties that create mutual obligations that are enforceable by law. In this situation, the CBA would be a contract between the County Executive and the Fraternal Order of Police, Montgomery County Lodge 35, Inc. To facilitate understanding of the terms of a contract between two parties, it is preferable to have a written document agreed to and signed by both parties that expressly states the terms of an agreement.²⁵

Once parties have agreed to the provisions of a contract, the parties can also mutually agree to change provisions in the contract. And, while it is preferable to have an agreed-upon written document that states the terms of a contract, contract terms and provisions can also be made by verbal agreement. It can be difficult for a third-party to determine or understand the provisions of a contract when the terms are not written down – especially if there is disagreement between the parties to the contract as to what was agreed upon.

In the process of conducting research for this report, OLO found that there is not agreement between the County Government and FOP Lodge 35 on the written documents that make up the full collective bargaining agreement between the parties. In this context, OLO's reference to a full "collective bargaining agreement" between the County and the FOP includes (1) the primary document that outlines the main provisions of the agreement, and (2) all appendices, side letters, and memoranda of agreement (MOAs) that modify the current primary document.

First, the Executive Branch and the FOP use different versions of the primary agreement and do not agree on a singular document as the primary CBA. Second, the parties also do not agree on which side letters and MOAs are part of the current agreement and which are not. OLO was told by representatives both in the Executive Branch and from the FOP that the County Government and the FOP have not had a signed collective bargaining agreement for over a decade. OLO has also been told by the Executive Branch that an agreement is in place and the Office of Labor Relations and the FOP are working towards a unified, written document. OLO notes that despite the state of the documents, the parties report that they work together to implement the collective bargaining agreement on a day-to-day basis and use an agreed-upon arbitration process to resolve disagreements, when necessary.

OLO's primary finding is that it is impossible for a third-party reader to identify the terms and provisions of the collective bargaining agreement between the County and FOP Lodge 35 because the parties do not agree on the primary document. In addition, while the County and the FOP agree that certain side letters and MOAs are in effect, they do not agree on the current status/effect of *all* side letters and MOAs. This disagreement adds to the inability of a third-party to know or understand all the provisions that make up the collective bargaining agreement.

OLO asked Executive Branch representatives to describe the collective bargaining agreement between the County and the FOP. Executive Branch staff provided the following written comments:

The Collective Bargaining Agreement is a document that is comprised of a binding agreement made between the parties each collective bargaining term and submitted to Council via Memorandum of Agreement per the County collective bargaining laws. Typically, the parties add to, amend, delete, or carry forward without amendment the

²⁵ See <https://www.law.cornell.edu/wex/contract#> for an explanation of the basic law of contracts.

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terms from the bargaining agreement that is about to end. This year, the parties sent Council a renegotiated MOA on May 11 after Council rejected the financial terms that the parties originally agreed to in an MOA sent to Council in April. Executive Branch staff have informed OLO that there is a binding three-year bargaining agreement which has been agreed to in all respects between the Executive Branch and the FOP, beginning July 1, 2020. However, due to differences associated with format and language contained in the various versions of previous CBAs, the bargaining agreement has yet to be reduced to one unified CBA document. The Executive Branch and the FOP are actively working to resolve these differences. Currently, the written documents that collectively comprise the County's binding bargaining agreement with the FOP consist of (1) terms from the CBA that ended on June 30, 2020 that the parties agreed to carry forward to the new agreement beginning July 1, 2020, pursuant to the term bargaining Ground Rules signed by the parties on October 17, 2019, (2) the amendments to the CBA that were agreed to by the FOP and the Executive and were included in the May 11, 2020 memorandum from the Executive to the Council President, and (3) further changes to the CBA to reflect subsequent Council action on May 13, 2020.

Documents Reviewed by OLO. OLO reviewed a number of documents provided by the County Government and by FOP Lodge 35 related to the collective bargaining agreement. OLO reviewed:

- A version of a collective bargaining agreement between the County and the FOP for the period July 1, 2019 through June 30, 2020 available on the website of the County Government's Office of Labor Relations (OLR).²⁶ See Appendix A.
- FOP-provided versions of a collective bargaining agreement between the County and the FOP for the period July 1, 2020 through June 30, 2023. Executive Branch staff reported to OLO that neither document provided by the FOP had been agreed to by the County Government. The Executive Branch also report that the two documents provided by the FOP have minor differences from the County version.
- A May 11, 2020 memorandum of agreement (MOA) between the County Government and FOP Lodge 35, sent by the Executive to the Council President via memo on May 11, 2020.²⁷ The MOA states that "[a]s a result of ... negotiations, the Employer and Union agree that the Collective Bargaining Agreement shall be amended according to the terms set below."²⁸ See Appendix B.
- The County-Government's repositories of appendices, side letters, and memoranda of agreement.
- Council Resolution 19-472, *Approval of and Appropriation for the FY 2021 Operating Budget of the Montgomery County Government* (May 21, 2020).²⁹ See Appendix C.

²⁶ https://www.montgomerycountymd.gov/HR/Resources/Files/Labor/FOP_2019_2020_AGREEMENT.pdf

²⁷ https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2020/20200513/20200513_9.pdf, see attachment C.

²⁸ Ibid. at C-3.

²⁹ https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=9684_1_10675_Resolution_19-472_Adopted_20200521.pdf

As described in Chapter 1, collective bargaining between the County and the FOP dates back almost four decades – to 1982 – to a time before County departments were able to maintain documents in electronic form. Over the past several years, Executive Branch staff in the Office of Labor Relations, the Office of the County Attorney (OCA), and MCPD have worked to find, identify, and electronically scan all documents related to the CBA (including side letters and MOAs) that are in the County’s possession. However, Executive Branch staff report that they may not have copies of all historical documents that modify or have modified over the years the primary CBA document.

Legal Significance of Side Letters and MOAs. The Office of Legislative Oversight asked the Office of the County Attorney to provide a written description of the documents appended to the primary collective bargaining agreement and their relevance. The OCA provided the following written comments:

Collective Bargaining between the Fraternal Order of Police, Lodge 35 and Montgomery County began in 1982 with the introduction of the Police Labor Relations Act (“PLRA”) in the Montgomery County Code, Section 33-75, et. seq. Since 1982, the parties have consistently bargained over those bargainable items as outlined in the PLRA, ultimately memorializing any agreed upon items in the succeeding collective bargaining agreement (“CBA”) resulting from that term’s bargaining session.

When the PLRA was first enacted, before the first CBA was bargained, the union members retained all rights they already had under the existing administrative procedures and personnel regulations. Since that first bargaining session, there remain certain APs and PRs that still apply to FOP members, as if unaltered by time, using the language that was in place at the time of the PLRA’s enactment.

In addition to CBA provisions, the parties have at times bargained side letters and memoranda of agreement (“MOAs”), which are either referenced in the CBA or otherwise attached to CBA articles by reference. There are certain CBA provisions which have either explicitly sunset, or, due to changing times and policing practices, are no longer applicable to the County’s Police Department, i.e., Article 69 references pilots and pilot pay, bargained when the County was going to obtain a helicopter for police use. Side letters and MOAs can be entered into at any time, by agreement of the parties, and often outside term bargaining, whenever necessary to effectuate some operational need within the Department, or to resolve a grievance.

Whether a CBA provision, side letter or MOA remains in effect is determined on a case by case basis. There are some CBA provisions, side letters and MOAs which have sunset, but the parties have continued to comply with the provisions and therefore created a past practice. There are other side letters and MOAs which one party may believe applies and the other party may disagree. The ultimate determination as to which CBA articles, side letters and MOAs apply is often determined by an arbitrator through the course of a grievance arbitration. Those grievance decisions will then impact the legality of those same provisions for the parties moving forward.

Labor Agreements with Montgomery County Police Officers

Documents Used in This Report. To fulfill the Council’s request to understand the terms and conditions in the County’s collective bargaining agreement with police officers, OLO had to determine which documents to reference as the basis for the agreement. For the purposes of this report to summarize the current provisions in the County Government’s CBA with FOP Lodge 35, OLO used:

- (1) The CBA on the County Government’s OLR website that expired on June 30, 2020;³⁰
- (2) The amendments to the CBA that were agreed to by the FOP and the Executive and were included in the May 11, 2020 memorandum from the Executive to the Council President;
- (3) Further changes to the CBA to reflect subsequent Council actions on May 13 and 21, 2020; and
- (4) Appendices, side letters, and MOAs.

Executive Branch staff have informed OLO that currently there is general agreement between the Executive Branch and the FOP on the terms of the new CBA but that the parties are still negotiating final language. To the extent that there is a final agreement between the Executive and the FOP, the agreement has not yet been memorialized in a written and signed document.

³⁰ Executive Branch staff reported to OLO that the FY20 CBA on the OLR website has not been updated to reflect the changes agreed to by the County and the FOP as reflected in the May 11, 2020 Memorandum of Agreement submitted to the County Council. Executive Branch staff also stated that OLR and the FOP are working to finalize this document and OLR will update its website once the CBA is fully updated.

Chapter 3. Summary of Collective Bargaining Agreement Provisions

This chapter summarizes the content of the Collective Bargaining Agreement (CBA) between Montgomery County and the Fraternal Order of Police Lodge 35 (FOP) based on two primary documents:

- The agreement between the County Government and the FOP dated July 2019 – that covers the period of July 1, 2019 through June 30, 2020; and
- Agreed-upon changes to the CBA that were submitted to the County Council on May 11, 2020.

In some cases, the summary references provisions in supplementary documents to the CBA, such as appendices and side letters. The primary CBA document used for this report is the only version currently available to the public. The parties have reported to OLO that, as of the writing of this report, they have not yet finalized an agreed-upon document that includes the May 11, 2020 changes.

The summary of key provisions appears in bulleted form in the tables on the following pages. For this summary, OLO selected provisions from the CBA that represent the breadth of topics covered by the CBA. OLO used its best judgement to include CBA provisions that would be of greatest interest to third-party readers of the CBA, that is, Councilmembers and residents of Montgomery County.

The summary is organized in 12 categories, listed in the table below, that represent OLO’s view on how to best consolidate the contents of the CBA by topic.

A	Union Rights and Activities
B	Management and Employee Rights
C	Pay
D	Benefits
E	Leave / Time Off
F	Vehicles, Uniforms, and Equipment
G	Weapons
H	Health and Safety
I	Personnel Matters
J	Work Rules and Responsibilities
K	Performance, Conduct, and Discipline
L	Locator and Camera Systems

Following each bulleted summary point, OLO included a parenthetical reference to the location of the provision in the CBA by Article and section. For example, the first bullet concludes with “(3A)” which indicates that that provision is found in Article 3, section A of the CBA. In some cases, OLO references to CBA provisions that have their source in outside documents, such as a State law or an appendix.

A. Union Rights and Activities

Agency Shop

- Employees must pay FOP dues or an equivalent service fee that is deducted from the employee's paycheck (3A). *(Note: In 2018, the U.S. Supreme Court ruled that the requirement that an employee pay service fee was unconstitutional.)*
- The County must allow FOP members to make voluntary political contributions to the FOP as a payroll deduction (3C).

Communications

- The FOP's business office is included as a stop in County interdepartmental mail (7B).
- The FOP is assigned a County email address (7C).
- FOP officials are granted access to work sites and are granted reasonable time to address officers at roll call (7E).

Contract Negotiations

- The Agreement describes the process to reopen negotiations should any economic or non-economic provision of the Agreement become inoperative (31A, B).
- The Agreement describes the process to reopen negotiations for issues determined bargainable by the Permanent Umpire pursuant to a prohibited practices charge (31G).
- The FOP may demand to bargain a provision of a new MCPD directive or rule. If the County does not agree that the provision is subject to bargaining, a Permanent Umpire will determine if the matter is bargainable (61B).

Contract Grievances

- A grievance is defined as a dispute as to the interpretation or application of terms of the Agreement (8A).
- Grievances are addressed through informal dispute resolution, mediation, or arbitration (8B-H).
- The grievance arbitrator is selected from a panel of arbitrators agreed to by the County and the FOP (8E2).
- The arbitrator makes decisions on a grievance based on the provisions of the current Agreement and applicable law (8G).
- The arbitrator's decision is final and binding on all parties (8G).

B. Management and Employee Rights

Verbatim entire text of County Code § 33-80(b)

The Agreement shall not impair the right and responsibility of the employer:

- To determine the overall budget and mission of the employer and any agency of the County Government;
- To maintain and improve the efficiency and effectiveness of operations;
- To determine the services to be rendered and the operations to be performed;
- To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted and the location of facilities;
- To direct or supervise employees;
- To hire, select and establish the standards governing promotion of employees and to classify positions;
- To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive;
- To make and enforce rules and regulations not inconsistent with this Law or a Collective Bargaining Agreement;
- To take actions to carry out the mission of government in situations of emergency;
- To transfer, assign and schedule employees. (42A)

Management Rights

Verbatim text of County Code §§ 33-78(a) and (b) but excludes §§ 33-78(c) – (f)

- Employees in the bargaining unit shall have the right:
 1. To form, join, support, contribute to, or participate in or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and
 2. To be fairly represented by their certified representative, if any.
- The employer shall have the duty to extend to the certified representative the exclusive right to represent employees for the purpose of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties. (42B)

Employee Rights

C. Pay

General Wage Adjustments

- FOP members will receive a 1.0% general wage adjustment in FY21 (36A of May 11, 2020 submission to Council). *(The Council rejected this provision on May 13, 2020.)*
- The County Executive agrees to submit to the County Council a supplemental appropriation request to fund FY21 pay increases in the event that: (a) County revenues exceed projections by a specified amount; (b) the Council funds pay increases for employees who are members of other bargaining units; or (c) the Council approves tax-supported spending greater than a specified amount (36A of May 11, 2020 submission to Council).
- In December 2020, the County and the FOP will reopen negotiations on FY22 cash compensation (31F of May 11, 2020 submission to Council).
- A new memorandum of agreement (MOA) regarding cellular phone use and a new MOA regarding taser use will not go into effect until the Council funds the FY21 GWA for FOP members.

Service Increments

- A service increment of 3.5% may be granted annually to employees who perform their duties and responsibilities at an acceptable level of competence (28A).
- A service increment is not granted to employees at the maximum salary for their grade (28A).
- In addition to the service increment, the FOP salary schedule will be adjusted to increase all salary levels by 3.5% (36A of May 11, 2020 submission to Council). *(The Council rejected this provision on May 13, 2020.)*
- The FY13 service increment is considered deferred (28A).

Longevity

- FOP members receive a longevity increase of 3.5% after 16 years of service (28H). *(The Council rejected award of longevity increases in FY21 on May 13, 2020.)*
- FOP members receive a longevity increase of 3.5% after 20 years of service (28H). *(The Council rejected award of longevity increases in FY21 on May 13, 2020.)*

C. Pay

Overtime	<ul style="list-style-type: none"> • Officers earn overtime for working hours outside their regularly scheduled shifts hours (15A). • Any regular work performed after less than 10 hours off is to be compensated at the overtime rate (15T5c). • Overtime is paid at 1.5 times an officer’s regular hourly pay rate (15A1). • The selection of officers to work overtime for scheduled events, in most cases, is based on seniority (15M).
Holiday Pay	<ul style="list-style-type: none"> • Employees who work on a holiday receive their regular workday pay plus premium pay of 1.5 times their regular hourly rate for each hour worked (14G-I).
Emergency Pay	<ul style="list-style-type: none"> • A “General Emergency” is defined as “any period determined by the county executive, chief administrative officer or designee to be a period of emergency, such as inclement weather conditions. Under such conditions, County offices are closed, and services are discontinued; only emergency services will be provided” (15B). • Employees required to work during a general emergency receive twice their regular hourly rate. Employees required to work overtime during the emergency receive their regular rate plus the overtime rate (15B).
Call-Back Pay	<ul style="list-style-type: none"> • An employee who is required to perform unscheduled work receives a guaranteed three hours of overtime “call-back” pay (15E).
Stand-By Pay	<ul style="list-style-type: none"> • Employees assigned to remain available for work for a specified period of time beyond their assigned work hours receive \$4.25 per hour of stand-by pay (15F).
Court Time	<ul style="list-style-type: none"> • An officer summonsed to court on his/her day off will be paid a minimum of three hours at 1.5 times the hourly rate (10A).

C. Pay

Special Pay

- Afternoon and nighttime shift differentials (41).
 - Multilingual pay (5C).
 - Roll call differential for Sergeants (62B).
 - Field Training Officer pay differential (5B).
 - Canine Officer pay (5A).
 - Clothing and shoe allowance for non-uniformed FOP members (6A-D).
-

D. Benefits

Retirement

- An FOP member is eligible for normal retirement at age 55 years with 15 years of service or at any age with 25 years of service (County Code 33-38).
- The normal and disability retirement annual pension benefit equals 2.4% of average final earnings multiplied by up to 30 years of credited service plus sick leave credits (up to a maximum of 76% of average final earnings) (57B).
- The FOP pension benefit integrates with Social Security (57I).
- Most current employees to contribute 4.75% of salary (57J). *(This provision is contrary to County Code 33-39(a)(2) that sets employee contribution at 6.75% of salary for service after June 30, 2012.)*
- The pension cost of living adjustment is tied to the Consumer Price Index with an annual cap of 7.5% (57H). *(This provision is contrary to County Code County Code 33-44(c)(6) that sets an annual COLA cap at 2.5%.)*
- The minimum pension for a non-service-connected disability is set at 33.3% of final earnings (57G).
- The minimum pension for a service-connected disability is set at 66.6% of final earnings (57D). *(This provision is contrary to County Code 33-43(i)(4) that sets minimum disability benefit at 52.5% of final earnings.)*

Health / Rx Insurance

- The health insurance premium split is set at 80% County / 20% employee (24A). *(This provision is contrary to the policy of a 75%/25% premium split reconfirmed annually in Council budget resolutions.)³¹*
- The high-option Rx plan costs and copays differs from those offered MCGEO and IAFF employees (24C).

³¹ Executive Branch staff stated that the CBA provision on the premium split reflects a “bargained-for agreement.” In practice, the Council-approved 75% / 25% premium split has been in effect each year for the past decade.

D. Benefits

Other Benefits

- Vision/optical insurance (24B).
 - Dental insurance (24K, L).
 - Flexible spending accounts for dependent care (40).
 - Long-term disability (24E).
 - Life Insurance (24N).
 - Deferred compensation plan (3H, 23A).
 - Tuition assistance (39).
 - Free use of County recreation facilities (29G).
-

E. Leave / Time Off

<p>Annual Leave</p>	<ul style="list-style-type: none"> • Full-time FOP members with less than 3 years of service earn 120 hours of annual leave per year (18E). • Full-time FOP members with 3 to 15 years of service earn 160 hours of annual leave per year (18E). • Full-time FOP members with more than 15 years of service earn 208 hours of annual leave per year (18E).
<p>Sick Leave</p>	<ul style="list-style-type: none"> • Full-time FOP members earn 120 hours of sick leave per year (19E). • The County is to establish a sick leave donor program for FOP members (19L-P). • The Agreement describes applicable Family and Medical Leave Act (FMLA) rules and procedures (59).
<p>Personnel Days</p>	<ul style="list-style-type: none"> • Full-time FOP members receive four personal days per year (14M).
<p>Holidays</p>	<ul style="list-style-type: none"> • The Agreement identifies nine holidays (14B).
<p>Compensatory Leave</p>	<ul style="list-style-type: none"> • An officer on duty on a holiday earns 1.5 hours of compensatory time for each hour worked on the officer’s regular workday and two 2 hours of compensatory leave for each hour worked on the officer’s regular day off (14J). • Employees receive 22-26 hours of compensatory leave per year (depending on regular workday hours) in exchange for three holidays no longer observed under the Agreement (14L).
<p>Parental Leave</p>	<ul style="list-style-type: none"> • An office may use up to 720 hours of sick, annual, compensatory leave or leave without pay to care for a newborn or newly adopted child (16).
<p>Disability Leave</p>	<ul style="list-style-type: none"> • An employee who is temporarily disabled as result of accidental injury or illness sustained directly in performance of the employee’s work is entitled to receive paid leave (17A). • A temporarily disabled employee receives full salary while on disability leave (17B1). • An employee on disability leave is required to accept other work assignments if physically capable (as determined by a physician) (17B1). • Disability leave is limited to 18 months per injury (17B2).

E. Leave / Time Off

Administrative Leave

- The Agreement provides for administrative leave for various circumstances including jury duty, bereavement, service in the armed forces reserves, and organ donation (2H-K).
 - FOP members are assessed three hours of annual or compensatory leave annually for use by the FOP President, Board members, and negotiating team members (2A-G).
-

F. Vehicles, Uniforms, and Equipment

- The Agreement establishes rules for the Personal Patrol Vehicle (PPV) program that provides officers with vehicles for both on-duty and off-duty use (35).
- The PPV program goal is to provide “greater police presence on the streets and in the neighborhoods of Montgomery County ... by enhancing the responsiveness of both on-duty and off-duty officers to calls for service” (35E).
- The County must make best effort to allocate cars among the Districts so that the most senior officers are assigned PPVs (35E).
- An officer who lives in the County may drive a PPV while off-duty. However, if the officer who resides in the County is driving the vehicle while off-duty, he or she must respond to incidents. An officer who lives outside but near the County may be granted permission to drive a PPV to and from home. Otherwise, the officer who lives outside the County must park the vehicle at a County location (35B).

Personal Patrol Vehicles

- An officer who lives within 15 miles of the County may drive their PPV to and from their home (35B of May 11, 2020 submission to Council). *(The Council rejected this provision on May 13, 2020.)*
- Off-duty officers in a PPV must carry a department approved handgun, have handcuffs in the vehicle, and carry credentials (35G4).
- Off-duty officers in PPVs are required to respond when they view an incident, receive a call for service from a citizen, or hear through their police radio of a serious incident near their location (35H3).
- Officers operating a PPV while not in uniform may make traffic stops “only when inaction would reflect unfavorably upon the department” (35G5).
- Portable radio, mobile telephone, and all weapons must be removed from an unattended vehicle (35G8).
- Officers are prohibited from using their PPV while engaged in political activities (35G18).

Other Vehicles

- Most officers who do not receive a PPV drive a Single Officer Fleet Vehicle (35).
- The County provides the FOP President with use of a vehicle (2G).

F. Vehicles, Uniforms, and Equipment

Uniforms

- The County will provide officers with specified articles of clothing (including, for example, shirts, pants, sweaters, jackets, raincoats, cap, and shoes) (Appendix I).
- Wearing a uniform off-duty is limited to a reasonable time before and after an officer's shifts and when attending events such as parades and memorial services (30C1).
- Officers are prohibited from wearing their uniform while attending a civil or criminal proceeding if the reason for their participation is not related to their official duties (30C3).
- Officers are prohibited from wearing their uniform while engaging in or attending any political or partisan activity (30C1).

Equipment

- The County will provide officers with specified equipment (including, for example, handcuffs, helmet, portable radio, flashlight, fingerprint kit, reflective vest, and first aid kit) (Appendix I).
- Officers must wear a bullet proof vest during ad hoc, high-risk assignments including civil disturbances, raids, and hostage situations. Wearing body armor is optional and voluntary at all other times (15S).
- Pursuant to a March 11, 2009 MOA, the County may issue cellular phones to FOP members for business use. The terms of the March 11, 2009 MOA under which those cellular phones may be used (including the content that may be stored on the cellular phones, what is required to be disclosed in response to a public information request, and other equipment necessary to safely operate the cellular phones) was amended by a January 23, 2020 MOA. The January 23, 2020 MOA does not go into effect until the Council funds the FY21 general wage adjustment (GWA) for FOP members. Until the GWA is funded, the March 11, 2009 MOA remains in effect (300 of May 11, 2020 submission to Council).

G. Weapons

Firearms

- The County will provide all FOP members a 9mm semiautomatic handgun (30B1 of May 11, 2020 submission to Council).
- The County will provide officers with a long gun when available (Appendix I).
- Weapons previously approved for purchase by unit members may be used off duty and as a second (back-up) weapon (30B1 of May 11, 2020 submission to Council).
- A side letter to the CBA (dated June 20, 2008) lists firearms accessories authorized for use by officers.

Baton

- The County will provide to all FOP members with an expandable baton (30K).

Tasers

- Tasers may be used “to control dangerous, violent, or uncooperative subjects, where attempts to control the subject with other tactics have been ineffective or it is reasonably unsafe. Additionally, the taser may be used to subdue individuals who pose an immediate risk to themselves or others or to safely affect arrest” (November 5, 2003 Memorandum of Agreement).
- The November 5, 2003 Memorandum of Agreement (MOA, cited in the previous bullet) is superseded by a January 23, 2020 MOA if the Council funds a FY21 general wage adjustment (GWA) for FOP members. Until the GWA is funded, the 2003 MOA will remain in effect (30R of May 11, 2020 submission to Council).
- Subject to budgetary limitations, MCPD will issue tasers to all officers who work in an assignment that routinely involves public contact (30R of May 11, 2020 submission to Council).
- Subject to budgetary limitations, MCPD will increase the number of tasers issued to patrol officers by 10 percent in FY22 and by an additional 10 percent in FY23 (30R of May 11, 2020 submission to Council).
- To receive a taser, an officer must successfully complete training and maintain certification (November 5, 2003 MOA).
- Tasers are distributed to patrol officers based on seniority (January 23, 2020 Memorandum of Agreement).
- Officers are not required to accept a taser (November 5, 2003 MOA).
- Officers who are issued a taser must carry the taser whenever working in a uniformed capacity, including during secondary employment (pending January 23, 2020 Memorandum of Agreement).

H. Health and Safety

Health and Safety Committee

- County and FOP representatives will participate in a joint health and safety committee to evaluate the effect on health and safety of working conditions and current or potential future police equipment and procedures (32A).

Disease Prevention and Control

- FOP members will be tested for communicable diseases at the County's cost (32B).
- The County will provide hepatitis and flu vaccinations to members (32D).

Notification of Risk

- MCPD must promptly notify officers of all vehicles, suspects, and conditions that may jeopardize safety of officers (32H).

Special Examinations

- Supervisors may request a special medical/psychological examination to assess an officer's fitness for duty (37, side letter).
- FOP members scheduled for special medical/psychological examinations must be advised of reasons for the examination (37A).
- An Employee Medical Examiner (EME) will perform medical examinations. The FOP and the County will mutually agree upon a panel of mental health care providers to perform psychological examinations and a separate panel to perform substance abuse examinations (37C, D).
- Following the examination, the EME or panel will determine duty restrictions, if any (37C, D).

Stress Counseling

- The County must establish a stress counseling program for FOP members (58A).
- All written stress management evaluations and treatment must be treated as confidential (58A).

Incapacitation

- MCPD will use its best efforts to assign chronically incapacitated officers to duties within their capacity (11D).
- The Agreement establishes standards for temporary restricted status (limited duty, light duty, and no-duty) (11E).

I. Personnel Matters

Promotions

- Promotions must be determined through a competitive process based on candidates' qualifications (44A).
- Promotion, selection, and non-selection decisions for employees in the highest rating category may be appealed through the grievance procedure (44B).
- An officer may who is eligible for a proficiency advancement but has been absent from duty for 90 days receives a pay increase but advancement to higher rank is delayed (unless absence is due to a service-connected injury or illness) (44F).

Reductions-in-Force

- Reductions-in-Force must comply with County administrative procedures (50A).
- All FOP positions are considered a single class for purpose of determining which job classes are subject to a reduction-in-force (50B).

Furloughs

- Furloughs must be conducted equitably and consistent with County administrative procedures (50C8).
- Lost furlough pay must not be made up by the same or other employees in overtime hours or compensatory time (50C1).
- The County may not restrict FOP members from using authorized leave (other than compensatory leave) during furlough period (50C1).
- Should the County Council not fund the negotiated FY21 general wage adjustment, the County Executive agrees not to furlough FOP members in FY21 (36A of May 11, 2020 submission to Council).

J. Work Rules and Responsibilities

Work Hours

- Employees' regular workweek is 40 hours over either 4 or 5 days (depending on position type) (15A1, 15K3).
- Hours worked in excess of 40 per week compensated at 1 ½ time overtime rate (15A1).
- On-call status is voluntary rotation to determine officers selected for overtime (15H).

Work Assignments

- The Agreement establishes procedures to assign officers to different shifts, units, and districts (15K-W).
- The Agreement establishes procedures for transfer of officers to different shifts, units, and districts (15Q).
- The Agreement establishes rules for procedures for a job-sharing program to assist employees with dependent care responsibilities (55).

Secondary Employment

- An employee must receive approval from the Police Chief before accepting secondary employment (27C).
- An employee may not engage in any secondary employment that presents an unacceptable risk of disabling injury (27D3).
- Employees may not engage in secondary employment during work hours (27D4).
- Employees with medical restrictions must abide by those restrictions while working secondary employment (27D5).
- In Montgomery County, employees may not engage in secondary employment at any business that sells, dispenses or handles alcoholic beverages (with exception of working certain security positions) (27D7).
- An off-duty officer working a security position who observes a potential offense should report the incident to an on-duty officer but may take immediate and appropriate police action when witnessing a crime (27E2).
- Officers may wear their patrol uniform and authorized equipment while engaged in certain secondary employment (27F).
- During secondary employment, employees may carry and utilize weapons, protective equipment, portable radio, ballistic vest, handcuffs, and other County-issued equipment (27G).

K. Performance, Conduct, and Discipline

Complaints

- The MCPD may investigate a complaint against an officer only if the complaint is filed within 90 days of an alleged act of brutality (Maryland Law Officers' Bill of Rights, LEOBR).
- Interrogation of an officer who is subject to a complaint is suspended up to ten days to allow the officer to obtain counsel (LEOBR).
- Interrogation of an officer must be conducted by a law enforcement officer (LEOBR).
- If an investigation results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or other punitive action, the officer is entitled to a hearing (LEOBR).
- For a recommended disciplinary action (other than for summary punishment), an officer may elect an LEOBR hearing board of three police officers selected by the Police Chief or an alternate hearing board of one police officer selected by the Police Chief, one police officer selected by the FOP, and one neutral arbitrator selected jointly by the Chief and the FOP (43A).

Performance Evaluations

- Supervisors may maintain a file for each employee that contains informal notes concerning the employee's job performance or conduct for the purpose of substantiating performance (51D3).
- Evaluation procedures are set forth in MCPD policy, Function Code 370 (53B).
- An employee who receives a less than satisfactory performance evaluation may be demoted after written warning, counseling and at least three months to improve (54C).
- Mobile Video Systems recordings may not be used for performance evaluations (66C7).
- Body Worn Camera System recordings may not be routinely reviewed for purpose of discovering misconduct or poor performance without cause. A supervisor may use BWCS recordings to address performance when cause exists (72D2).

K. Performance, Conduct, and Discipline

Personnel Files

- OHR maintains a personnel file on each employee including employment history, commendations, education and training records, performance evaluations, and disciplinary actions (51C1).
- Reprimands are to be removed from OHR files after one year, performance evaluations removed after five years (51C1).
- MCPD maintains a personnel file on each employee with documents necessary for program operations, including contact information, payroll data, leave records, performance evaluations, commendations, awards, and disciplinary actions, and training certificates (51B3).
- Disciplinary actions are to be removed from Police Department files after five years, reprimands are to be removed after one year, and performance evaluations are to be removed after five years (51C3).
- MCPD may maintain a second personnel file kept within the employee's unit that does not contain a record of disciplinary actions (51B3).
- FOP members who review an application for a vacant position may view the candidate's performance evaluations, letters of commendation, awards and training documents, but may not access other personnel file documents (51B7g).

Inappropriate Relationships

- Instructors and field training officers (FTOs) must not engage in an intimate/sexual relationship with a trainee. The instructor/FTO must immediately disclose to a supervisor if a conflict exists (15L1).
- No disciplinary action or retaliation may occur as a result of the disclosure of an intimate/sexual relationship with a trainee (15L2).
- An instructor/FTO found in an undisclosed intimate/sexual relationship with trainee will be transferred involuntarily (15L4).
- Violation of the disclosure rule will not result in disciplinary action (15L4).

K. Performance, Conduct, and Discipline

Substance Abuse

- Employees must not take or possess illegal drugs while on duty, on County property, or in a County vehicle (Appendix A, 3.0).
- Employees must not have illegal drugs in their bodies while on duty (Appendix A, 3.0).
- Employees must not consume alcohol while on duty (Appendix A, 3.1).
- Alcoholism is recognized as disease. Alcohol-related disciplinary problems will not be dealt with exclusively in a punitive fashion (4A, B).
- Employees must not be impaired by, or the under influence of, alcohol while on duty (Appendix A, 3.1).
- “Impaired” is defined as a blood alcohol concentration (BAC) of .05%; “Under influence” is defined as BAC of .10% (Appendix A, 3.1).
- Employees who violate the substance abuse policy may be subject to periodic drug/alcohol testing and may be disciplined (Appendix A, 3.21, 3.22).
- Employees who obtain drug/alcohol abuse treatment on their own initiative may not be subject to disciplinary action, absent a violation of law or regulation (Appendix A, 3.14).
- After reviewing information presented by an employee’s supervisor, the Police Chief may require an employee to submit to drug/alcohol testing (Appendix A, 4.0).

Incident Reporting

- Employees must report any incident in which they are arrested, a defendant in criminal proceeding, had their driver's license suspended or revoked, subject of a criminal investigation, or subject of a protective order that impacts their ability to carry a weapon or perform their duties (15Y).
- All information related to a reportable incident is considered confidential and may only be shared on a need-to-know basis. All persons are presumed innocent until proven guilty (15Y).

L. Locator and Camera Systems

Mobile Video System

- The Mobile Video System (MVS) is an onboard vehicle video system that automatically records when a vehicle's emergency lights are activated, or when the wireless audio transmitter is in operation (66B7).
- Officers must activate MVS video and audio for all traffic stops, vehicular pursuits, priority responses, and crimes in progress (66B8).
- For prisoner transports, officers must activate the MVS video; MVS video may be activated only with the prisoner's consent (66B13).
- Officers may activate MVS video without the consent of involved parties when the officer feels the recording may have merit, for example, in cases of disorderly conduct and at crime scenes (66B10).
- Officers may activate MVS audio, with the consent of involved parties, any time officer feels recording may have merit (66B11).
- Officers may deactivate MVS to conserve recording time if the officer does not reasonably believe that deactivation will result in loss of evidence and if the officer records the reason for deactivation before deactivation (66B9).
- All MVS recordings will be destroyed after 210 days, unless the recording is, or may reasonably become, evidence in any proceeding (66C6).
- Original MVS recordings will not be released unless pursuant to a valid court order (66C11).
- The County will notify the FOP of all external requests for MVS recordings, including subpoenas and summonses, and will solicit the FOP's opinion before responding to the request. If the County determines that the request cannot be denied per the MPIA, the County will allow the FOP to file a reverse MPIA action and will not grant the original MPIA request until a court orders the recording to be disclosed (66C13).
- The County may use a MVS recording as a basis of discipline only after: an external complaint, a pursuit, use of force resulting in an injury, a collision involving a police vehicle, a non-employee's claims of injury, or upon a reasonable basis to suspect an officer engaged in criminal wrongdoing or serious allegations of misconduct. Except in a case of an external complaint, disciplinary action will be limited to serious allegations of misconduct (66C2).

L. Locator and Camera Systems

Cell Phones

- Location tracking software on cellular phones issued by the County to FOP members may not be the sole basis for officer discipline (pending January 23, 2020 Memorandum of Agreement).

Vehicle and Portable Radio Locators

- The Automatic Vehicle Locator (AVL) and Portable Radio Locator (PRL) systems identify the location of police vehicles and portable radios (65A).
 - The County will store AVL/PRL data up to 365 days and will notify the FOP if it changes its AVL/PRL data storage requirements (65A).
 - The County will deny all Maryland Public Information Act (MPIA) requests for stored AVL/PRL data on the movements and location of vehicles unless a court establishes that AVL/PRL data is subject to the MPIA. County will defend its denials of MPIA requests for stored AVL/PRL data in trial courts and will continue to defend these denials until a court establishes that AVL/PRL data is not confidential information (65D).
 - The County agrees that it will seek court protection from any subpoena or summons seeking stored AVL/PRL data on the movements and location of vehicles assigned to FOP members, except for subpoenas issued by a grand jury, or a State or federal prosecutor. The County will seek protection from subpoenas and summonses in trial courts, until a court establishes that AVL/PRL data is not confidential information (65E).
-

L. Locator and Camera Systems

Body Worn Camera System

- Except in cases involving litigation, the County will provide notice to the FOP prior to public release of any Body Worn Camera System (BWCS) recording. In an emergency, the County may provide notice after release (72E1).
 - The County must notify an employee of its intent to use BWCS as a basis of discipline for an employee. An employee may review BWCS recordings with his/her selected representative at least five days before being interrogated (72D4).
 - The County will review all external requests for BWCS recordings, including subpoenas and summonses, for compliance with applicable standards, including those imposed by the CBA. If the FOP objects to release of any portion of the recording, the FOP must promptly notify the County of its intent to file a reverse MPIA claim (72E3).
 - All BWCS recordings will be destroyed after 210 days, unless the MCPD deems it necessary to retain a recording for a longer period of time (72F1).
 - Officers may review a recording for any work-related reason, including to assist with report writing, to review their own performance, and to prepare for court (72G1).
 - Officers must be permitted to review a BWCS recording prior to making a statement regarding a civil suit, criminal investigation, or complaint (72G1).
 - In case of a formal internal investigation of an officer, the County must provide the officer with all BWCS recordings related to an incident at least five working days in advance of questioning (72G4).
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Chapter 4. Difficulties for the Third-Party Reader

This chapter discusses the degree to which the content of the Collective Bargaining Agreement (CBA) documents between Montgomery County and the Fraternal Order of Police Lodge 35 is accessible and comprehensible by a third-party reader, that is, a reader other than those most directly involved in negotiation of the CBA. Unless otherwise indicated, provisions cited in this chapter refer to the CBA dated July 2019 to cover the period of July 1, 2019 through June 30, 2020, the most recent CBA currently available to the public.

OLO finds that the current CBA is exceptionally difficult for a third-party reader to read and understand. OLO presents the following observations about the current CBA between the County and the FOP.

A. Lack of Transparency

A third-party who wishes to read and understand the CBA will encounter several obstacles that combine to make the document unclear, uncertain, and opaque. To substantiate this point, OLO notes:

- The current copy of the CBA on the County website has expired. The CBA posted online is online is dated July 2019 covering the period between July 1, 2019 through June 30, 2020.
- The CBA table of contents lists 22 appendices; only one of these appendices is available online.
- The CBA references dozens of supplementary documents referred to as “side letters” or “MOAs.” None of these documents are available to the public online. In the example below from the May 11, 2020 changes to the CBA, a third-third party reader would be unable to access the two referenced MOAs.

Article 30

Section O. *Cellular Phones*. Subject to budget limitations, unit members will be issued cellular phones for business use. Unit members shall not be eligible to be reimbursed for the cost of business calls that are made on personally owned cellular phones. Until such time as the FY21 GWA is funded, the March 12, 2009 MOA shall apply. The January 23, 2020 MOA shall become effective and shall replace the March 12, 2009 MOA on the first day of the same pay period that the FY 21 GWA is funded.

Labor Agreements with Montgomery County Police Officers

- While many of the side letters and MOAs are identified by their date, in several places, the CBA generically refers to a side letter or MOA without providing any means to identify the document as evident in the example from Article 30 of the CBA below.

Article 30

Section A. Employees shall be issued the equipment identified in Appendix I of this Agreement. When the scheduled working hours of specific units increase or decrease significantly during the contract term, the parties agree to discuss reasonable changes to the quantities of uniforms and equipment needed by members of such units. [See Applicable Side Letters and MOA's]

- Many provisions of the CBA lack context. For example, Article 57 describes many aspects of the pension benefit provided to FOP members. However, the CBA does not include any mention or reference to the criteria (age and years of service) that make an FOP member eligible to receive a pension.
- While the CBA defines some terms, the document does not contain a comprehensive list of definitions for the many specialized words or terms used.
- The CBA does not contain a subject index.

B. Inconsistency with Law and Policies

OLO identified multiple provisions in the CBA that appear to be inconsistent with existing County laws, regulations and policies. When a conflict arises between a collectively bargained labor agreement and County law, the law controls.³² Conversely, when a conflict exists between a labor agreement and a County personnel regulation, the labor agreement controls.³³ The CBA also controls when a MCPD directive, rule, or procedure conflicts with a provision of the CBA.³⁴ Notwithstanding these rules of preeminence, inconsistency among supporting documents may generate confusion as to the actual policies in effect. Examples of CBA provisions that are not consistent with law and policies include:

- Article 24, Section A identifies the premium split for employee health insurance at 80% County / 20% employee. For nearly a decade, the Council has set the premium split at 75% County / 25% employee in its approved annual operating budget resolutions.
- Article 30, Section R references a Memorandum of Agreement (MOA), dated November 5, 2003, that governs the use of tasers (also known as electronic control weapons of ECWs). The MOA includes the following text describing when an office may use a taser:

³² *Fraternal Order of Police, Montgomery County Lodge 35, et al. v. Montgomery County, Maryland, et al.*, Court of Appeals of Maryland, 437 Md. 618 (2014). <https://mdcourts.gov/data/opinions/coa/2014/67a13.pdf>

³³ Code of Montgomery County Regulations 33.07.01.02, Section 2-9.

³⁴ MCPD Policy, *Department Mission and Organizational Values*, Function Code 210.

Memorandum of Agreement, November 5, 2003

The taser is a tool used to provide less than lethal force. It may be used to control dangerous, violent, or uncooperative subjects where attempts to control the subject with other tactics have been ineffective or it is reasonably unsafe. Additionally, the taser may be used to subdue individuals who pose an immediate risk to themselves or others or to safely affect an arrest.

OLO notes that, in the agreed-upon CBA changes submitted to the Council in May 2020, the above referenced MOA will remain in effect until the Council funds a FY21 general wage adjustment for FOP members.

In contrast, MCPD Policy, Electronic Control Weapons Function Code 133, dated September 21, 2016, presents a more restrictive standard for taser use.

MCPD Policy, Function Code 133

Officers may only deploy an ECW when an objectively reasonable officer would conclude that the circumstances present a risk of immediate danger that is reasonably likely to be mitigated by use of the ECW.

An ECW may be used against subjects who are actively resisting in circumstances that, in the officer's judgment, present a risk of immediate danger to the officer or others.

- Article 57 of the CBA outlines certain elements of police officers' pension benefits. Police officer pension benefits are established in Chapter 33 of the County Code. Article 57 includes at least three elements of the FOP pension benefit that are not consistent with the plan design stipulated in Chapter 33 of the County Code.
 - Section 57D of the CBA states that the minimum pension for service-connected disability is 66.6% of final earnings; the County Code § 33-43(i)(4) sets the minimum disability benefit at 52.5% of final earnings.
 - Section 57J of the CBA states that the employee pension contribution is 4.75% of salary; County Code § 33-39(a)(2) sets the employee contribution at 6.75% of salary for service after June 30, 2012.
 - Section 57H of the CBA states that the caps on the annual pension cost of living adjustment is 7.5%; the County Code § 33-44(c)(6) sets the annual COLA cap at 2.5%.
- Article 65, Section D of the CBA states that the County will deny all Maryland Public Information Act (MPIA) requests for Automatic Vehicle Locator (AVL) and Portable Radio Locator (PRL) data unless a court establishes that AVL/PRL data is not confidential information. The MPIA:
 - [G]rants the public a broad right of access to records that are in the possession of State and local government agencies.... The basic mandate of the PIA is to enable people to have access to government records without unnecessary cost or delay. Custodians of

records are to provide such access unless the requested records fall within one of the exceptions in the statute.³⁵

The MPIA specifically identifies types of information that are not subject to public release. None of the exceptions authorizes a blanket refusal to deny all requests for AVL/PRL data. While there may be authority under the MPIA to redact certain portions of a video, it is rare that the entire video can be withheld from public inspection. Moreover, this provision of the CBA appears to conflict with the Section 4-103 of the MPIA that states that “unless an unwarranted invasion of the privacy of a person in interest would result, this title shall be construed in favor of allowing inspection of a public record.”³⁶

C. Dated Material

The CBA includes many dated provisions and references. To the third-party reader, the CBA addresses many topics that appear to be out-of-date and no longer relevant. OLO notes, however, that the Office of the County Attorney has informed OLO that the relevance of dated material in the CBA often cannot be readily ascertained (see Chapter 2 of this report). Nonetheless, many dated provisions and references clutter the CBA, which may generate confusion for the third-party reader. Examples of dated material in the CBA include:

- Article 17, Section E includes the text of a notice to be given to an injured employee regarding the filing of a workers’ compensation claim. The notice provides a web address for the injured employee to submit a worker’s compensation claim. The web address shown in the CBA is neither current nor correct.
- Article 31, Section F of the current CBA includes a provision about a FY14 reopener.

Article 31

Section F. *Reopener Matters.* In September 2012 there shall be a reopener for the second year (July 1, 2013 to June 30, 2014) limited to:

- a. Cash compensation
- b. Reopener
- c. Duration (Article 47) to permit a 3rd year
- d. Health care issues, including union administered health care

- Article 36, Section A of the Fiscal Year 2020 CBA cites many of the annual pay increases approved for Fiscal Years 2013 through 2019.
- Article 36, Section E states the County may initiate a system of mailing payroll checks to employees' home addresses. The County discontinued mailing paychecks more than a decade ago.

³⁵ *Maryland Public Information Act Manual – Fourteenth Edition*, Office of the Maryland Attorney General, 205, page 1-1, https://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf.

³⁶ Annotated Code of Maryland, General Provisions Article, Title 4, Section 4-103(b).

- Article 39, Section A8 states that the County seek Council approval of \$135,000 in tuition assistance funding in Fiscal Year 2012.
- Article 57, Section M2 states that a study of the effect of Social Security integration on the pension benefit will be completed by November 2003.
- Article 63, Section C calls for the FOP and the County to jointly retain a consultant to conduct a childcare needs assessment survey. The CBA states that the “consultant shall report to the parties by June 2009.”
- Article 69 of CBA sets pay differential for flight officers in the MCPD Aviation Unit. MCPD has not owned aircraft for more than a decade.

Article 69

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

- Article 70 establishes a Wellness Study Committee that is to issue a report by June 2010.
- Appendix E displays an outdated (1994) version of the State Worker’s Compensation Claim Form. The form has been updated several times since 1994. The current form, which is now available online, requires the applicant to provide different information than the 1994 form.

D. Items Overtaken by Events

The CBA includes language that, while once relevant, is no longer pertinent given events that have transpired since the language was first included in the document years ago. These items do not accurately portray current conditions and so could lead a third-party reader to misconstrue certain element of the CBA. Examples of items in the CBA that have been overtaken by events include:

- Article 3, Section A states that an employee who elects not to become a member of the FOP must pay a \$312 annual service fee. In 2018, the U.S. Supreme Court ruled such a requirement unconstitutional.
- Article 24, Section O states that that the County must extend health and insurance to same or opposite-sex domestic partners. Following approval of the Maryland Civil Marriage Protection Act, the Council approved Bill 16-16 that prohibits a new application for group insurance benefits for domestic partners of County employees and retirees.

Article 24

Section O. *Domestic Partners*. It is an expressed term of this agreement that health and insurance benefits shall be extended to same or opposite-sex domestic partners.

- Article 57 of the CBA addresses retirement benefits for FOP members. Multiple times, the CBA indicates that the County and the FOP have agreed to pursue legislation to amend sections of the County Code that govern retirement benefits for police officers. In many of these cases, bills were introduced and acted on by the County Council several years ago.
 - Article 57, Section C refers to pending legislation that would enable employees to purchase pension credit for military service. The Council approved that legislation almost two decades ago.
 - Article 57, Section M1B calls for the County Executive to submit legislation to the County Council to amend the disability retirement rules in Section 33-43(j) of the County Code. Bill 38-08, approved by the County Council in 2009, addressed the disability retirement provisions of the County Code described in Section 57M1B of the CBA.
 - Article 57, Section O calls for the County Executive to submit legislation to the County Council to modify the Discontinued Retirement Option Plan (DROP) program rules in Section 33-38A of the County Code and to rename the program the Discontinued Retirement Service Program (DRSP). The County Council approved Bill 7-08 in 2008 to amend program rules and to rename the program.
 - Article 57, Section U calls for the County Executive to submit legislation to the County Council to amend Section 33-38 of the County Code so that a police officer would become eligible for an unreduced pension with 25 years of credited service regardless of age. The County Council approved this change as part of Bill 7-08 in 2008.
 - Article 57, Section V calls for the County Executive to submit legislation to the County Council to amend Section 33-41(m) of the County Code to allow an FOP member to purchase a service time credit for time spent on leave without pay. The County Council approved this change as part of Bill 7-08 in 2008.

Article 57

Section V. *Leave Without Pay*. The Employer shall submit legislation to the county Council to amend Montgomery County Code, Chapter 33, Article II to provide for the revisions infra.

A unit member who is on leave without pay shall have the opportunity to purchase service at the true actuarial cost for up to one year of such absence.

Legislation required under this article shall be submitted to the County Council on or before April 1, 2008 with an effective date of July 1, 2008.

E. Unclear or Ambiguous Language

The CBA and its appendices include several provisions with language that is unclear or ambiguous to a third-party reader. OLO provides the following examples:

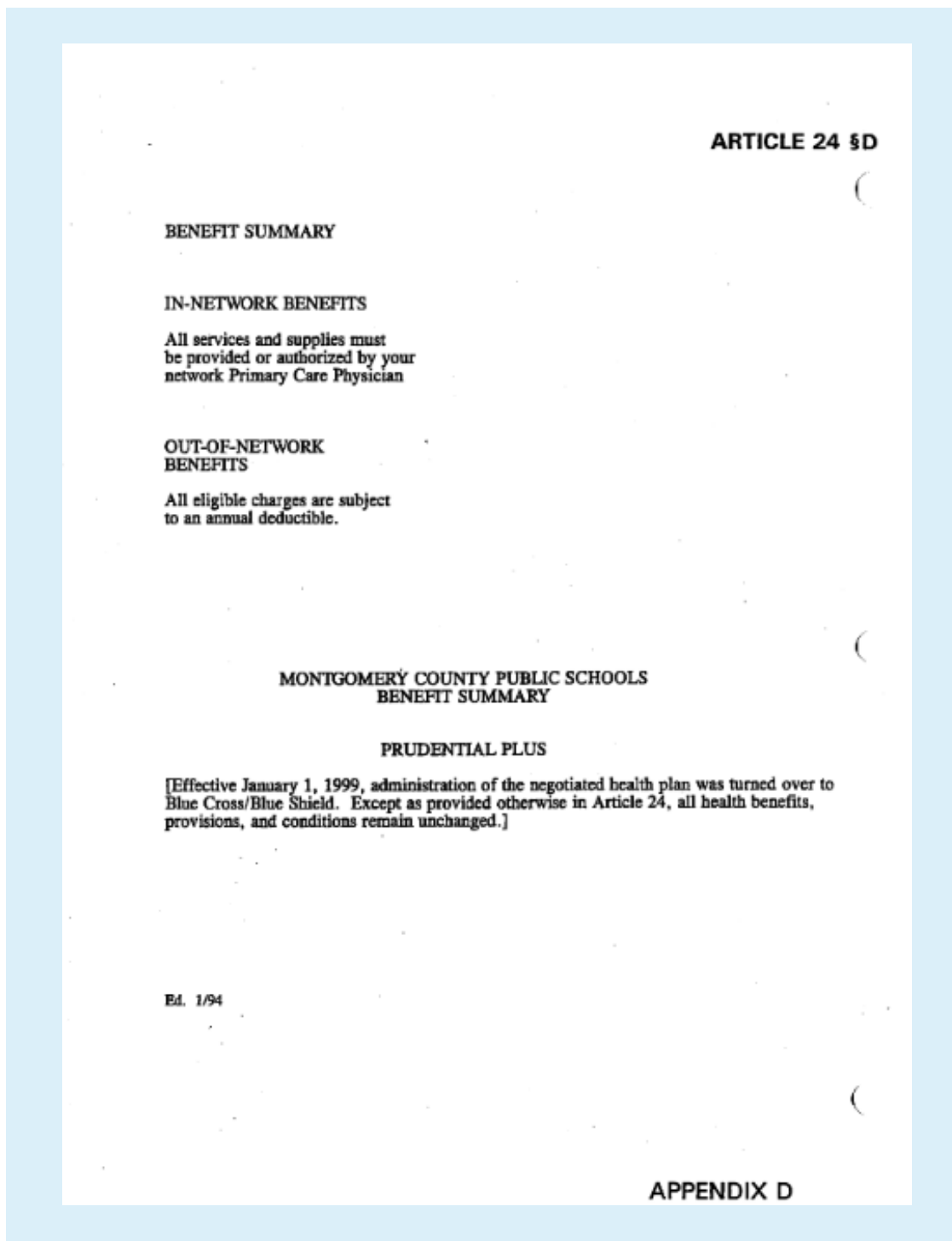
- Article 35, Section G5 states off-duty officers driving a personal patrol vehicle (PPV) or a single officer fleet vehicle (SOFV) while not in uniform should “make traffic stops only when inaction would reflect unfavorably upon the department.” The CBA does provide any further specification or direction to define when inaction would reflect unfavorably upon the department.
- In several places, the CBA speaks of retention of previously negotiated benefits without identifying those benefits. As evident from the example below from Article 57, Section A, a third-party reader has no way of knowing which specific benefits are retained.

Article 57

Section A. *Preservation of Benefits*. Except as provided in this Agreement, all unit members retain all the retirement benefits and conditions previously in effect between the parties. [See Side letter.]

Labor Agreements with Montgomery County Police Officers

- The CBA refers to Appendix D to indicate that FOP members are eligible to participate in a point of service health insurance plan (see Article 24, Section E).



Appendix D is a benefits summary for a 1994 health insurance plan called “Prudential Plus” offered to employees of the Montgomery County Public Schools (MCPS). The following text was added to the document: “Effective January 1, 1999, administration of the negotiated

health plan was turned over to Blue Cross/Blue Shield. Except as provided otherwise in Article 24, all health benefits, provisions, and conditions remain unchanged.” Article 24, Section E of the CBA further states that Appendix D is further amended by Appendix S to allow for open access to in-network Blue Cross/Blue Shield providers.

For the third-party reader, the relevance and significance of Appendix D to the current CBA is unclear. For OLO, the presence of Appendix D raises the following questions:

- Why is an MCPS document appended to a County Government CBA? Was the 1994 health insurance plan offered MCPS employees identical to the plan offered FOP members? If so, why was the County Government plan not appended to the CBA?
- As the County no longer offers Prudential plans as a health insurance option for employees, do the plan benefits still apply to FOP employees? If so, how would one reconcile differences between the benefits offered by the 1994 MCPS Prudential Plus plan and benefits offered by health insurance plans currently available to FOP employees?
- Appendix D includes the sentence: “Except as provided otherwise in Article 24, all health benefits, provisions, and conditions remain unchanged.” What is the meaning of this sentence given that, during the past two decades, the FOP and the County have negotiated changes to the health insurance benefit that are not specified in Article 24 of the CBA?

Chapter 5. OLO Recommendation

This report presents a summary of key provisions of the Collective Bargaining Agreement (CBA) between Montgomery County and the Fraternal Order of Police Lodge 35. Councilmembers should review this summary to determine whether they would like further information related to the contents of the CBA or if they would like to schedule a worksession to discuss particular elements of the CBA.

As detailed in this report, OLO found that it is impossible for a third-party reader to know the contents of the collective bargaining agreement based on the current document available online on the County Government's website or based on the documents provided to OLO by the County Government and the FOP. Among other things, the current CBA:

- Includes provisions that contradict current requirements of federal, State, and County laws as well as certain County Council resolutions;
- References unnamed supplementary documents (side letters and memoranda of agreement); and
- Includes information that is out of date and provisions that are not currently in effect.

OLO believes that it is important for public transparency that third-party readers be able to access and understand the contents of County labor agreements with employees. To rectify these problems, **OLO recommends that the Council amend the County's Police Labor Relations law to require, at a minimum, that:**

- 1. The language in the CBA and all appendices and other supplementary documents should be consistent with current federal, Maryland, and County law and current Council-approved collective bargaining and budget resolutions.**
- 2. All documents that make up the current CBA, including all appendices and other supplementary documents considered part of the agreement, be readily accessible to third-party readers online.**
- 3. Each supplementary document considered part of the agreement have a unique name and that the text of the CBA specifically references each supplementary document by name.**
- 4. During the bargaining process, the County and the bargaining unit purge outdated and/or moot text from the CBA and supplementary documents.**
- 5. The County Executive annually notify the County Council of all modifications and amendments to the CBA and its supplementary documents.**

OLO also recommends that the Council consider whether to similarly amend the County's labor relations laws for other employees.

Chapter 6. Stakeholder Comments

The Office of Legislative Oversight sent a draft of this report to the County Executive and to FOP Lodge 35 on Monday, December 14, 2020, with a request that the parties provide OLO no later than January 8, 2021: (1) technical comments on and corrections to the report, and (2) written comments on the report findings and recommendations for inclusion in the final report. The parties' written comments on the report findings and recommendations are attached on the following pages.

In addition to the written comments, Executive Branch staff also met with OLO staff to discuss edits to the report and sent written recommended technical edits. This final report reflects the Executive Branch's comments that OLO incorporated into the report. The FOP did not provide OLO any technical comments on or corrections to the report.