MFP ITEM 3
April 20, 2009
Discussion

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Michael Faden, Senior Legislative Attorney[1]
Robert H. Drummer, Legislative Attorney

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

This worksession will discuss the amendments to the County's collective bargaining agreements with the Municipal and County Government Employees Organization (MCGEO), representing County employees who are in the OPT and SLT bargaining units, and the Fraternal Order of Police (FOP), representing members of the police bargaining unit. See ©4-15 (MCGEO) and ©21-35 (FOP). For the budget overview, see operating budget excerpts on ©1-3.

Both these agreements are "concession agreements" which resulted from negotiations between the County Executive and the respective union after the Executive proposed not to fund the cost of living increases in each collective bargaining agreement. As you know, negotiations with the third County bargaining unit, the firefighters unit represented by the International Association of Firefighters (IAFF), did not result in an agreement.

Office of Human Resources (OHR) answers to Council staff questions about the MCGEO agreement are on ©16-20 and the FOP agreement are on ©36-41.

These agreements are subject to the same Council review process as other collective bargaining agreements, which is outlined below.

Legal Background

Under the County Employees Labor Relations Laws (Police: County Code §§33-75 through 33-85; County employees: County Code §§33-101 through 33-112; Fire and Rescue employees: County Code §§33-147 through 33-157), the County Council must review any term or condition of each final collective bargaining agreement requiring an appropriation of funds or enactment, repeal, or modification of a county law or regulation. On or before May 1, unless the Council extends this deadline for up to 15 days, the Council must indicate by resolution its

[1]Much of the analysis in this memo relating to the FOP contract amendments was furnished by Senior Legislative Analyst Linda McMillan.

intention to appropriate funds for or otherwise implement the agreement or its intention not to do so, and state its reasons for any intent to reject any part of an agreement. The Council is not bound by the agreement on those matters over which the Council has final approval. The Council may address contract items individually rather than on an all-or-nothing basis. See County Code §33-80(g); §33-108(g)-(j); §33-153(l)-(p).

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

Assuming the May 1 deadline is extended, as a resolution on the April 21 Council agenda would do, this Committee is scheduled to revisit these issues on May 8.

Concession Agreements

The MCPS unions agreed to "postpone" the scheduled FY10 COLA (5.3 percent) without major contract changes, except for a parity ("me too") clause. FOP Lodge 35 and MCGEO Local 1994 entered into "concession agreements" with the Executive that postpone the COLAs (4.25 and 4.5 percent, respectively) but include some new contract provisions. Their key provisions are:

1) **Both agreements:** For employees in the defined benefit pension plan, the future pension benefit must credit annual salary as if the COLA had been paid in FY10. The budget lists no current fiscal impact for this "ghost" or "phantom" COLA credit, but it certainly will generate costs in the future because neither the County nor employees will contribute to the pension fund (the Employees' Retirement System) for the forgone FY10 COLA amount. This credit would be inserted in the County retirement law by Bill 18-09, introduced on April 14, which this Committee is scheduled to consider on May 8. **Council staff question:** *Should the pension fund, which is already under pressure, have to absorb this additional burden?* For Executive staff's answer to this question, see Item 9 on ©19. The County actuary has not produced a long-term cost estimate yet for this item.

2) **MCGEO agreement:** Employees at normal retirement age, or within two years of it, will be eligible for a one-time $40,000 buyout incentive and a waiver of the early retirement penalty, with participating employees scheduled to retire on June 1. The program is supposed to help find openings for employees in the 234 filled positions that are expected to be abolished. *Mr. Drummer's memo on Bill 10-09, to be discussed later in this worksession, covers the cost and policy issues this provision raises.*

3) **MCGEO agreement**: Employees at the top of their pay grade will receive 60 hours (1.5 weeks) of compensatory leave in FY10. **Council staff question:** *What overtime and other costs will result?* For Executive staff's answer to this question, see Item 4 on ©17-18.

4) **MCGEO agreement:** The current member of the Board of Investment Trustees nominated by the union representing the OPT and the SLT bargaining units would be replaced by an *ex officio* member nominated by the same union. The *ex officio* member would not be subject to a 3-year term. Under current law, the Executive would have the discretion to appoint a different representative of the employees in the OPT and SLT units after the member's 3-year term expires. The Executive would no longer have this authority under this provision. This change would be made by Bill 19-09, introduced on April 14, that this Committee is scheduled to consider on May 8. **Council staff question:** *Does this mean that the union's ex officio member is no longer subject to replacement by the Executive?*

5) **FOP agreement:** Officers will receive 3 additional personal leave days each year. Executive staff argues that this added leave requires no extra cost for personnel or overtime because the provision of the agreement states that it is understood that this additional Personal Leave will be taken and used without additional personnel cost or use of overtime to backfill and unused leave is forfeited at the end of the leave year. **Council staff question:** *How is this possible?* For Executive staff's answer to this question, see Item 2 on ©36-37.

Council staff believes that there will need to be some increased use of overtime to backfill when officers are on these additional personal leave days (for both unit and non-unit members). This may be less of an issue in FY10 if the Department continues to carry an overage, but this increase in personal leave days is a permanent provision which continues until amended by the parties and is not limited to FY10.

6) **FOP agreement:** Officers who live outside the County but within 15 miles of the County's borders (about 200 officers) will now have full-use vehicles (Personal Patrol Vehicles). Officers who live in the County would now be able to drive their PPV's up to the 15-mile radius as well.

Council staff questions: *How does this square with the original rationale in the contract for PPV's: "providing greater police presence on the streets and in the neighborhoods of Montgomery County"? How does the fiscal placeholder in the budget, $237,000, square with the added cost for vehicles, fuel, insurance, and maintenance, which are probably many times that amount? What added liability would flow from this personal use of vehicles in surrounding jurisdictions, particularly non-Maryland jurisdictions where the Maryland Local Government Tort Claims Act would not apply?* For Executive staff's answers to these questions, see Items 4-11 and 14 on ©37-41.

Currently, officers who successfully complete probation in the Police Officer I rank and live in the County are eligible for a Personal Patrol Vehicle (PPV). A PPV is a full-use vehicle and can be used both on and off duty. The vehicles are assigned based on seniority. Article 35 of the Collective Bargaining Agreement requires the County not to reduce the number of PPVs in the fleet and to make its best efforts to provide a car to each eligible officer, subject to Council-imposed limitations and service needs. All vehicles assigned to officers who reside in the County, whether they are marked or unmarked, are classified as PPVs. There are certain exceptions to eligibility requirements, which include full-use vehicles being provided to officers assigned to the Training Academy, and officers assigned to the Centralized Tactical Section and

Canine Section who live within 15 miles of the County line are assigned a vehicle for "to and from" use only. The collective bargaining agreement also allows an officer whose domicile is outside, but near, the County borders to be assigned a vehicle for "to and from" use only. Under the FOP concession agreement, all officers living within 15 miles of the County border would be eligible for a PPV, and the vehicle could be used as a full use vehicle anywhere in this radius.

Council staff is particularly concerned about the cost estimate of $237,000 to implement this program because the Council was asked to approve $1,750,000 in the FY09 budget to implement the Single Officer Fleet Vehicle (SOFV) program, which does not provide full use cars or cars that can be regularly taken out of the county. Under the concession agreement, officers who live more than 15 miles from the County borders would be eligible for a SOFV.

The Police Department has provided the following information on the number of PPVs, Fleet Cars, and SOFVs. This is not the entire fleet of vehicles in the Department. The number of PPVs is higher than the numbers provided to the Council last spring when it was considering the approval of the SOFV program. The Department has told the Public Safety Committee that these are accurate numbers of available cars in these categories.

Personal Patrol Vehicles	716
Fleet Cars	281
Single Officer Fleet Vehicles	97
Executive staff vehicles	56
TOTAL	1,150

The Department has indicated that 93 officers currently assigned SOFVs will now be eligible for PPVs because they live within 15 miles of the border.

If the new agreement is implemented, 96 officers who live outside the 15 mile boundary will be eligible for a SOFV. Because the collective bargaining agreement requires full implementation of the SOFV program by July 1, these 96 officers will be assigned an SOFV even if the County does not have enough vehicles to assign to each officer who is eligible for a PPV.

OHR has provided information on the number of officers in each rank of the bargaining unit. Assuming all officers currently in the Police Officer I rank complete their probationary period in the coming year, 1,138 officers would be eligible for a PPV or SOFV. However, even under the revised numbers, there are only 813 vehicles in the PPV and SOFV categories or a shortfall of 325. Since the vast majority of officers will be eligible for a PPV or SOFV, some of the Fleet Vehicles could be reassigned. But even if 200 of the 281 were reassigned, there could still eventually be a shortfall of up to 125 vehicles. Fleet cars cannot be eliminated as they are needed for Police Officer I's not yet eligible for a PPV or SOFV and for use by officers when their assigned vehicle is being repaired or getting scheduled maintenance.

No new vehicles are included in the FY10 Recommended Budget to implement this item of the concession agreement. The Executive has not provided any details on the assumptions behind the $237,000 "placeholder" but Executive staff has told the Public

Safety Committee that no new vehicles are needed to implement this provision. A new vehicle, including radio, computer, and operating expenses, costs about $50,000.

If the $237,000 is meant to pay for additional mileage, assuming a police vehicle will get 25mpg and gas is $2 per gallon, the cost of gasoline per mile is 8 cents. The $237,000 could provide gasoline for an additional 2.96 million miles. If a PPV averages 25,000 miles driven per year, this would fund gasoline for an additional 118 vehicles. These numbers are hypothetical because Council staff does not have information on the assumptions behind the $237,000 and Executive staff declined to provide more detail at the April 14 public hearing and April 16 Public Safety Committee meeting.

Council staff understands that PPVs, which are assigned by seniority, would be assigned to an Officer who lives outside the County (within 15 miles of the border) instead of an eligible Officer with less seniority who lives in the County.

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

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

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

The Executive and Municipal and County Government Employees Organization (MCGEO), Local 1994, agreed to seek legislation authorizing a retirement incentive program for FY10. Employees at normal retirement age or within two years of normal retirement will be eligible to receive the $40,000 incentive. Similar to the program successfully implemented in FY09, this incentive is intended to realize long term personnel cost savings, but it will also provide a mechanism to coordinate and manage the significant number of position abolishments and reductions-in-force included in the recommended budget. The Executive's budget includes estimated savings of $1,011,260 in the Personnel Cost Savings NDA for this program.

COLLECTIVE BARGAINING

Fire and Rescue Bargaining Unit:

International Association of Fire Fighters, Local 1664: The current agreement expires June 30, 2011. The agreement's salient economic terms include:

- A general wage adjustment of 2.0 percent effective the first full pay period after July 1, 2008, 2.0 percent in January 2009, 4.0 percent in July 2009, and 3.5 percent in July 2010.
- A new longevity adjustment at 28 years of service in July 2009, and an additional step on the salary schedule in July 2010.
- A service increment of 3.5 percent for eligible employees.
- New primary and backup scheduler differential in July 2008; and increase in hazardous materials, breathing apparatus technician certification, fire code, fire investigation, urban search and rescue, swift water rescue, and scheduler assignment pay, as well as an increase in ECC certification pay, in July 2009.
- Effective January 2009, County contribution for prescription insurance fixed to 80 percent of standard option (employee may buy-up at their own cost), generics are restricted, incentives are established for mail order, and high option copayments remain at $4/$8.
- Expansion of the list of illnesses for which an employee is automatically entitled to a service-connected disability retirement.
- A $100 increase each year in tuition assistance.
- Establishment of random drug testing.
- Bottled water at each station and parking improvements at select stations are provided.

For FY10, the Executive anticipates successful conclusion of negotiations with IAFF on wages, therefore, funding of the FY10 general wage adjustment is not included in the recommended budget. As a result, $4.7 million in increased costs are avoided.

Montgomery County Volunteer Fire and Rescue Association (MCVFRA): The current agreement expires June 30, 2011. The salient economic terms of the agreement include:

- Increased administrative support funding and a nominal fee for certain members.
- Turn-out boots and gear bags provided to active members.
- Increased number of contracts printed, association vehicle supplied, provision of one computer, development of online courses, and County sponsorship of annual awards dinner.
- Establishment of random drug testing.

OPT/SLT Bargaining Units:

Municipal and County Government Employees Organization (MCGEO), United Food and Commercial Workers, Local 1994: The current agreements expire June 30, 2010. The agreement's salient economic terms, including those negotiated through a reopener on health and pension issues, include:

- A general wage adjustment of 4.0, 4.5, and 4.5 percent effective the first full pay period in July 2007, 2008, and 2009, respectively.
- A service increment of 3.5 percent for eligible employees.
- An increase from 2 percent to 3 percent in longevity increment for unit members at pay grade maximum and 20 years of completed service effective January 2008.
- A $100 increase each year in tuition assistance.
- A wage increase for employees on the seasonal wage scale of $0.40 per hour in FY08 and $0.45 per hour in fiscal 2009 and 2010.
- A 1.5 percent retention increment for Bus Operators after four years completed service and an additional 1.5 percent retention increment after six years of completed service effective January 2008.
- Implementation of a new salary schedule for Correctional Officers and adjustments to the Deputy Sheriffs salary schedule to include Sergeants and a new step for Deputy Sheriff III and Sergeant.
- Increase evening shift differential $0.05 in FY08 and FY09; increase midnight shift differential $0.05 in fiscal 09; implement the midnight shift differential for non-ECC Police Public Service Aides working the 8 pm to 6 am shift; increase advanced multilingual differential $0.20 in FY08; and increase the field training differential $0.25 in FY08 and FY10.
- Implementation of a gainsharing program to encourage and promote new, innovative ideas, concepts and strategies to deliver County services and products cost effectively.
- Effective January 2009, County contribution for prescription insurance fixed to 80 percent of standard option (employee may buy-up at their own cost), generics are restricted, incentives are established for mail order, and high option copayments remain at $4/$8.
- In the Group E retirement plan, the social security integration multiplier increased from 1.25 to 1.65 percent
- Employer contribution increases from 6 to 8 percent in the Retirement Savings Plan in July 2008.
- Guaranteed Retirement Income Plan ("GRIP") offered July 1, 2009, which ensures an investment return of 7.25 percent, with a 6-month election period for employees hired on or after July 1, 2009.

For FY10, the Executive and MCGEO agreed to amend the existing agreement effective July 1, 2009. The following are the salient economic terms contained in the amendments:

- FY10 general wage adjustment shall not be effective in FY10. Fiscal impact: $11.3 million cost increase avoided.
- One-time credit of 60 hours of compensatory leave for all bargaining unit employees at pay grade maximum in FY10. Fiscal Impact: No additional funding included in the recommended budget. The additional hours cannot be cashed out but must be used as leave. Overtime costs may result due to minimum staffing requirements in certain operations.
- Retirement benefit calculation for bargaining unit members shall credit annual salary as if general wage adjustment had been paid in FY10. Fiscal Impact: No additional funding included in the recommended budget. The FY10 retirement fund contribution was calculated based on the actuarial valuation as of June 30, 2008, prior to the execution of this agreement.
- Increase administrative leave bank for use by SLT and OPT Unit Council representatives by 160 hours and 140 hours respectively. Fiscal Impact: No additional funding included in the recommended budget; however, additional paid leave has an economic value and may have an impact on minimum staffing requirements in certain operations.

Police Bargaining Unit:

Fraternal Order of Police Lodge 35: The current agreement expires June 30, 2010. The agreement's salient economic terms, including those negotiated through a reopener on health and pension issues, include:

- A $3,151 increase to Step 0, Year 1 of pay plan – maintaining existing structure, in July 2007; general wage adjustments of 4.0 percent in July 2008 and 4.25 percent in July 2009.
- A service increment of 3.5 percent for eligible employees.
- Increase in the clothing allowance each year.
- A $100 increase each year in tuition assistance.
- Increase in the shift differential each year.
- Full implementation of the Single Officer Fleet Vehicle program by July 1, 2009 including video cameras.
- Establish DROP program; increase credited service to a maximum of 36 years, including sick leave credits; and establish eligibility for unreduced pension with 25 years of service, regardless of age.
- Effective January 2009, County contribution for prescription insurance fixed to 80 percent of standard option (employee may buy-up at their own cost), generics are restricted, incentives are established for mail order, high option copayments are increased to $5/$10.

For FY10, the Executive and FOP agreed to terminate the existing agreement effective June 30, 2009 and replace it with a successor term agreement effective July 1, 2009 through June 30, 2011. The following are the successor agreement's salient economic terms:

- FY10 general wage adjustment shall not be effective in FY10. Fiscal impact: $4.9 million cost increase avoided.
- Salary-based benefits shall not be diminished, and such benefits will be calculated as if the wage increase had been received as scheduled. Fiscal Impact: No additional funding included in the recommended budget. The FY10 group insurance contribution was calculated based on the actuarial valuation as of June 30, 2008, prior to the execution of this agreement.
- Unit members will receive four personal days at the beginning of each leave year. It is understood the additional personal leave will be used without additional personnel costs or the use of overtime to backfill unit members on leave. Fiscal Impact: No additional funding included in the recommended budget. This is an increase of three personal leave days.
- Vehicles assigned to unit members who reside in Montgomery County or within 15 miles of the County's borders shall be full-use vehicles. Fiscal Impact: Additional fuel and maintenance costs can be expected. A placeholder of $237,000 is included in the Department of Police budget.
- Retirement benefit calculation for bargaining unit members shall credit annual salary as if general wage adjustment had been paid in FY10. Fiscal Impact: No additional funding included in the recommended budget. The FY10 retirement fund contribution was calculated based on the actuarial valuation as of June 30, 2008, prior to the execution of this agreement.
- Salary-based value of forfeited annual leave may be donated to the Montgomery County Law Enforcement Officers' Relief Fund. Fiscal Impact: No additional funding included in the recommended budget. A fiscal impact may occur if an employee accepts a forfeiture of annual leave in lieu of suspension and elects to have the forfeited sum donated to the fund.
- Reopener in November 2009 on wages, service increments, and other benefits to be effective July 1, 2010.

WORKFORCE ANALYSIS

Basis: Workforce Analysis has been performed on changes to tax supported and non-tax supported workyears (WYs) in the Executive's Recommended FY10 Operating Budget for the County government. Overall changes are calculated in comparison to the Approved Personnel Complement for FY09, which began on July 1, 2008. Changes shown reflect such factors as the addition of grant-funded positions; abolishments and creations to implement approved job sharing agreements; technical adjustments to remove positions currently associated with "group positions" which can contain unlimited numbers of employees (temporary, seasonal, or contractual), but are defined by the amount of service in terms of workyears that they are to provide; and other miscellaneous changes. Changes recommended by the Executive for FY10 are in three categories: current year position changes due to supplemental appropriations or other actions, new fiscal year position changes scheduled to take effect July 1, 2009, and position changes scheduled for later in the fiscal year. In the latter case, the workyear change will be prorated for the portion of the year it is recommended.

Summary: The recommended budget includes funding for 8,923 full-time positions, a net decrease of 115 from the approved FY09 Personnel Complement of 9,038 full-time positions. Funding for 940 part-time positions is included, a net decrease of 163 positions from the approved FY09 Personnel Complement of 1,103 positions.

Tax supported workyears account for 82.9 percent of the County's total workyears. Total tax supported workyears will decrease to 8,084.2 WYs in FY10, a decrease of 283.5 WYs or 3.4 percent.

Total County government workyears will decrease to 9,734.2 WYs in FY10, a decrease of 298.9 WYs or 3.0 percent. When measured relative to population, total workyears per thousand population has also decreased, from FY09 (10.47 compared to 10.08).

Of the County's 8,084.2 tax supported workyears proposed for FY10, Public Safety departments account for 48.5 percent, or 3,920.4 workyears. Public Safety workyears will decrease by 67.9 workyears, or 1.7 percent from FY09 levels. Detailed below are the significant net changes in the number of tax supported workyears in the FY10 Recommended Budget.

Workforce Changes (Tax Supported)	WYs
• DOT-Transit Services: route reductions, elimination of part-time bus operator positions, and program reductions	-42.0
• Public Libraries: elimination of vacant positions across branches	-38.3
• Recreation: Teen Club Program, pool manager positions, and teen programs seasonal staff	-28.0
• Health and Human Services: includes the addition of the Emergency Safety Net Program and the elimination of the Assertive Community Treatment Team	-26.4
• Police: elimination of several civilian administrative and sworn positions	-28.6
• Fire and Rescue Services: the opening of the Milestone (East Germantown) Fire Station is offset by the reduction in recruit classes	-9.7

OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

March 16, 2009

TO: Philip M. Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Memorandum of Agreement between the County and MCGEO

I have attached for the Council's review the agreement resulting from the recent collective bargaining discussions between the Montgomery County Government and the Municipal & County Government Employees Organization/United Food and Commercial Workers Union Local 1994. The agreement reflects the changes that will be made to the existing Collective Bargaining Agreement effective through June 30, 2010. I have also attached a synopsis of the agreed upon items as well as the fiscal impact statement to assist in the Council's review of the document. The legislation and any necessary changes to the Personnel Regulations to accomplish these negotiated items will be forwarded to the Council shortly.

Attachments

IL: stc

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

This memorandum of understanding between the Montgomery County Government and the Municipal & County Government Employees, UFCW Local 1994, is intended to memorialize the concession agreement reached during direct negotiations in January 2009.

Please use the key below when reading this regulation:

Boldface	*Heading or defined term.*
Underlining	*Added to existing regulation by proposed regulation.*
[Single boldface brackets]	*Deleted from existing regulation by proposed regulation.*

The parties agree to amend the contract as follows:

* * *

The parties recognize the economic crisis facing the County, particularly the overwhelming revenue short fall projected for fiscal year 2010. The County is calling on all of its employees to come together to deal with this grave situation. It is in this context that the parties have agreed to these amendments to the Collective Bargaining agreement for fiscal year 2010. The County intends to require similar financial sacrifices from all employees in fiscal year 2010.

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ARTICLE 5 – WAGES, SALARY AND EMPLOYEE COMPENSATION

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5.2 Wages

* * *

(c) Effective the first full pay period following July 1, 2009, each unit member shall receive a 4.5 percent increase. Bargaining unit employees shall be paid a base salary pursuant to the uniform pay plan, which appears in Appendix VIIC of this agreement. This General Wage Adjustment shall be postponed and shall not be effective during fiscal year 2010.

(d) If the County government or MCPS negotiates higher compensation improvements for any of its employee organizations during FY 2010, except for

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improvements for any of its employee organizations during FY 2010, except for HOC and MNCPPC, those higher increases will be matched for bargaining unit employees.

(e) In the event the County's financial condition improves and there are funds in excess of that necessary to maintain the current level of services, then the parties may reopen this agreement to discuss wages.

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ARTICLE 6 – SERVICE INCREMENTS

6.1 Service Increments

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(c) Bargaining Unit employees shall continue to be eligible for regularly scheduled service increments in FY-2010 under this article.

(d) All bargaining unit members who are at the top of their salary grade in FY-2010, shall on a one time basis, be credited with sixty (60) hours of compensatory leave on their service increment date. The employee must use the sixty hours as leave.

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ARTICLE 21 – BENEFITS

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21.3 Employee Benefits Committee

(a) (2) make findings and/or recommendations to the parties regarding changes in employee benefits and cost containment initiatives.

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[21.4 Health Benefit Review for Calendar Years 1998-2000

The Employee Benefits Committee will conduct a review of the County's health, life, and dental benefits plan for calendar years 1998-2000. The Committee review shall include, but not be limited to, the following topics:

(a) improvements in dental, vision, and prescription benefits at same or lower costs;

(b) unbundling of dental, health and life benefits;

(c) Pru-Plus out of network deductible;

(d) podiatry care;

(e) coverage of alternative medicine; and

(f) coverage for employee who live out of state.]

* * *

21.14 (b) The parties agree to jointly establish an interagency labor/management study committee that will review the feasibility of creating an interagency, multi-employer Health Benefits Board of Trustees to assume the administration of the participating agencies' health insurance funds/programs. The joint study committee will also consider all reasonable issues regarding the subject of health benefits cost containment. Membership on the joint study committee will be equally split between union and management representatives. Each participating agency and its unions will be represented by an equal number of participants. The committee will present its report by [July 30, 2005] December 31, 2010.

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ARTICLE 27 – REDUCTION-IN-FORCE

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27.5 Bargaining Unit Job Security

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The County recognizes the bargaining units' support of the County's role in the implementation of the *Personal Responsibilities and Work Opportunities Act* of 1996 and the *Welfare Innovations Act* of 1997. In implementing those acts, the County will comply with the Agreement as well as all federal, State, and County laws, regulations, and policies pertaining to employee displacement and job protections. The County shall make every effort to avoid the layoff of bargaining unit members consistent with Article 27 of this Agreement to include the elimination/reduction of services provided by contractor(s) either employed by an outside vendor or by the county as an individual contractor, regardless of funding source. In addition, the County will continue to use Discontinued Service Retirement as in the past.

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ARTICLE 28 – DISCIPLINARY ACTIONS

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28.6 Investigative Examinations

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(h) Employees shall be notified of their right to representation upon notice that they are subject to investigation.

28.7 Rights of Union Representative During Investigative Examinations

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(e) After a question is asked, the steward can advise the bargaining unit member on how to answer.

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ARTICLE 36 – UNION ACTIVITIES

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36.2 Paid time used under this Article shall be charged to administrative leave. There shall be established an Administrative Leave Bank a maximum of [840] 1000 hours per year for use by SLT Unit Council representatives and a maximum of [1560] 1700 hours per year for OPT Unit Council representatives as defined in this Agreement. Any leave used under this procedure shall be recorded and charged in accordance with procedures agreed upon by the parties. The Union shall make every effort to give as much advance notice as possible. Leave not used in any year shall not be carried over to the next year.

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ARTICLE 41 – RETIREMENT

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41.3 Retirement Committee

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(c) The parties agree that in accordance with the County policy on Boards and Commissions, to submit legislation providing that the representative selected by UFCW Local 1994 and approved by the County Executive to the Board of Investment Trustees shall be designated as an Ex Offico member.

* * *

41.6 The parties agree to jointly submit legislation to the County Council providing that for the purposes of retirement benefit calculation, all bargaining unit members shall be credited at the annual salary amounts as if a 4.5% cost of living adjustment had been paid in FY-2010.

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Article 41.9 Retirement Incentive Program II

The County shall submit legislation to establish a one time retirement incentive to accomplish the following:

The County shall offer a one-time retirement incentive to active full time employees who are Group H or Group E participants in the Employees' Retirement System (ERS) and who are within two years of meeting the criteria for normal retirement as follows:

a. The County shall offer the choice of (a) a one-time lump sum payment of forty thousand dollars ($40,000) payable from the ERS on August 1, 2009 and eligible for rollover (b) a pension benefit increased by $3,333.33 for the first twelve months and eligible for rollover or (c) an additional retirement benefit of $40,000 paid in the elected form of benefit to employees who are eligible for normal retirement as of June 1, 2009 and express by April 1, 2009 to the Office of Human Resources a written intention to retire on June 1, 2009;

b. The County shall waive the early retirement reduction and offer a choice of (a) a one-time lump sum payment of $40,000 payable from the ERS and eligible for rollover (b) a pension benefit increased by $3,333.33 for the first twelve months and eligible for rollover or (c) an additional retirement benefit of $40,000 paid in the elected form of benefit to employees to employees who are eligible for early retirement and within two years of meeting the criteria eligibility for normal retirement as of June 1, 2009 and express by April 1, 2009 to the Office of Human Resources a written intention to retire on June 1, 2009;

c. Effective June 1, 2009, increase social security integration multiplier for Group E to 1.65%.

Employees are not eligible if they retire on a discontinued service retirement or a disability retirement. Employees who apply for a disability retirement will not receive any amounts until the disability retirement has been determined.

If more than thirty percent of employees eligible for retirement incentive, by department, express a written intention to the Office of Human Resources to participate in the retirement incentive, the County reserves the right to limit participation by department. Any such limitation shall be based upon actual years of County service.

* * *

ARTICLE 55 – COST EFFICENCY STUDY GROUP

The parties shall establish a study group consisting of the Local 1994 President and two (2) other Union representatives; the Director of OHR and two (2) other employer representatives and the purpose of the group shall include, but not be limited to any of the following:

(1) Evaluate the service delivery model for each agency/program/department which employ bargaining unit members;

(2) Evaluate the supervisory/management structure in each agency/program/department which employ bargaining unit member, to include the supervisor to employee ratio;

(3) Evaluate the technology, equipment, and tools supplied to bargaining unit members to perform their duties and responsibilities;

(4) Evaluate the County Executive branch's operating budget to identify potential cost reductions that will not adversely impact same services;

(5) Evaluate the cost effectiveness of current contracts with outside vendors who perform services that can otherwise be performed by bargaining unit members or via other more cost effective ways;

The study group's charge shall be to identify potential cost savings and/or productivity/efficiency enhancement/improvements. Any cost savings shall be dedicated to maintaining services. The study group shall have its first meeting no later than July 30, 2009.

* * *

APPENDIX VI – OPT/SLT UNITS – DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION

* * *

(c) Fleet Management

Summary of Proposed Concession Agreement with MCGEO for FY 2010

No.	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
1.	Preamble	Recognition of the financial crisis facing the County for FY-2010 and the need for amendments to current agreement	No	No	No		
2.	5.2, Wages	4.5% General Wage Adjustment for FY 2010 will be postponed Any increases negotiated with other County employee organizations will be matched for MCGEO employees Reopener allowed if financial situation improves	No	No	No		
3.	6.1, Service Increments	Service increments will be given for FY 2010 as agreed Unit members at top of grade will receive 60 hours of compensatory time on increment date which must be used as leave	Yes	Yes	No		See County Executive's Recommended FY10 Operating Budget – page 8-5
4.	21.3, Employee Benefits Committee	Committee will also make recommendations for cost containment initiatives	No	No	No		
5.	21.4, Health Benefit Review	Health Benefit Review for 1998-2000 language will be deleted	No	No	No		
6.	21.14(b), Health Benefits Board of Trustees	Committee report date changed to December 31, 2010 from July 30, 2005	No	No	No		
7.	27.5, Bargaining Unit Job Security	County shall eliminate/reduce contractor/vender services to avoid the layoff of unit members; DSR shall continue	No	No	No		

Summary of Concession Agreement with MCGEO for FY 2010
Page 2

No.	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
8.	28.6, Investigative Examinations	Employees will receive notice of right to representation when notified they are subject to an investigation	No	No	No		
9.	28.7, Rights of Union Representative	Union Steward may advise unit member how to answer questions during an investigative examination	No	No	No		
10.	36.2, Union Activities	Administrative Leave Bank will increase to a maximum of 1000 hours per year for SLT Unit Council reps and 1700 hours per year for OPT Unit Council reps	No	Yes	No		See County Executive's Recommended FY10 Operating Budget – page 8-5
11.	41.3, Retirement Committee	Legislation shall be provided by both parties for the UFCW Local 1994 representative to the Board of Investment Trustees to be designated as an Ex Offico member	No	No	Yes		
12.	41.6, Retirement	For retirement benefit calculation purposes, unit members will be credited with an annual salary as if the 4.5% GWA has been paid in FY-2010	No	Yes	Yes		See County Executive's Recommended FY10 Operating Budget – page 8-5

No.	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
13.	41.9 Retirement Incentive Program	One time retirement incentive to active employees in Group H or Group E in the ERS and within 2 years of meeting criteria for a normal retirement Lump Sum of $40,000, pension benefit increased by $3,333.33 for first 12 months, or additional retirement benefit of $40,000 to be paid in the elected form of benefit for employees who are eligible for retirement as of June 1, 2009 Waive early retirement reduction with above options for employees who are within two years of meeting retirement criteria Increase social security integration multiplier for Group E to 1.65% Employees retiring on a DSR or disability retirement are not eligible. If 30% of employees eligible expresses written intent to participate in the incentive, by department, the County reserves the right to limit participation based on actual years of County service	Yes	Yes	Yes		See Fiscal Impact Statement

No.	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
14.	55, Cost Efficiency Study Group	Study group to consist of Local 1994 President, 2 other Union representatives, OHR Director, and 2 other employer representatives Purpose of group is to evaluate and identify potential cost savings and/or productivity enhancements of agencies, programs, and departments which employ bargaining unit members	No	No	No		
15.	Appendix VI (c), Fleet Management	The 4 day 10 hour work week will be available for the Heavy Equipment section	No	No	No		

MEMORANDUM

April 10, 2009

TO: Philip M. Andrews, President, Montgomery County Council
Duchy Trachtenberg, Chair, Management and Fiscal Policy Committee

FROM: Joseph Adler, Director, Office of Human Resources

SUBJECT: Information Request – Collective Bargaining Agreement between the Montgomery County Government and the Municipal & County Government Employees Organization/United Food and Commercial Workers Union Local 1994

This is in response to the information request from Council staff dated March 31, 2009.

It should be noted initially that this concession agreement resulted from direct "discussions" between the County and the Municipal & County Government Employees Organization/United Food and Commercial Workers Union Local1994 (MCGEO). Since MCGEO had no obligation to bargain with the County about canceling or postponing the 4.50 percent wage increase scheduled to take effect in July 2009, the impasse and interest arbitration procedures mandated by the County's collective bargaining law were not applicable to these "discussions."

1. **Is there a fiscal impact statement beyond the conclusions on page 8-5 of the Executive's recommended budget? Please provide it.**

   According to OMB, there is no fiscal impact statement for the MCGEO agreement beyond that set forth on page 8-5 of the County Executive's recommended budget. OMB, however, is preparing fiscal impact statements for the legislation resulting from the MCGEO bargaining agreement. The fiscal impact statement for the legislation giving the MCGEO representative *ex officio* status on the Board of Investment Trustees has been transmitted to Council with the bill. The fiscal impact statement for the retirement legislation is pending receipt of information from the County's actuary.

2. **Sec. 5.2 (c) – Does the use of the phrase "postponed and shall not be effective during FY10" mean that the 4.5% COLA will automatically kick in on July 1, 2010, subject to Council appropriation? If not, what does it mean?**

The phrase "postponed and shall not be effective during FY10" does not mean that that the 4.5 percent general wage adjustment will automatically go into effect on July 1, 2010 or any other date. In the fall of 2009, the County Government will commence negotiations with MCGEO on a new term agreement to go into effect in July 2010. Those negotiations will determine the amount, if any, of a general wage adjustment for FY 2011, subject to Council appropriation.

In our view, the term "postponed" should be read in conjunction with Section 5.2(e) which provides for reopening the agreement to discuss wages in the event the County's financial condition improves and there are funds in excess of that necessary to maintain the current level of services.

3. **Sec. 5.2(d) – Does this provision apply if the Executive negotiates higher compensation, or only if the Council approves higher compensation for other bargaining units? Does higher compensation include benefits, or is it limited to wages and salary?**

The "me-too" provision is triggered if the County Government or MCPS negotiates higher compensation improvements for any of its employee organizations. The compensation provided for any bargaining unit is of course subject to Council appropriation. The term "higher compensation improvements" is no per se limited to wages and would arguably include any element of compensation such as improved health insurance premiums.

4. **Sec. 6.1(d) – Do you have a fiscal impact for the 60 hours of comp leave for employees at the top of the grade? How many employees are affected and what is the dollar value of their leave? In particular, please estimate the amount of overtime that will be necessary to fill in for essential employees County-wide and in major direct service units (e.g. DOT, Libraries) who take the added compensatory leave. Also, will this added leave be passed through to unrepresented (including MLS) employees who are at top of grade?**

Currently, there are about 1450 MCGEO bargaining unit employees who are at the top of their grade. This calculates to a dollar value of approximately $2.6 million. However, no additional funding is needed to implement this provision because the leave cannot be converted into a monetary payment. As explained in the budget document, to the extent that minimum staffing is impacted in certain operations from the additional use of leave, the provision could lead to additional overtime. According to OMB, they cannot predict within any reasonable amount of certainty how often this

would occur, if at all. In addition, normal leave approval procedures would remain in place and OHR would expect managers and supervisors to maintain operations with minimal impact on overtime use.

This added leave in the form of compensatory leave will be passed through to unrepresented employees at top of grade on their service increment date but not to MLS employees because they are not eligible for compensatory leave.

5. **Sec. 27.5 – Can MCGEO file a grievance arbitration to challenge layoffs of unit members because the County could have eliminated a service contract instead?**

As a general rule all provisions of a collective bargaining agreement are grievable, absent specific language that a particular action or provision is not grievable. In our view, this provision requires the County to use its "best efforts" to avoid the layoff of bargaining unit employees. While MCGEO can challenge layoffs of bargaining unit employees by filing a grievance, we don't believe that such a grievance would be upheld by an arbitrator.

6. **Sec. 36.2 – What is the value of the additional administrative leave for union activity? As above, please estimate the amount of overtime needed to fill in during these leaves County-wide and in major direct service units.**

According to OMB, the value of this additional administrative leave is less than $10,000. As discussed in the response to question #4 above, to the extent that minimum staffing is impacted in certain operations from the additional use of leave, this could lead to additional overtime. According to OMB, they cannot predict within any reasonable amount of certainty how often this would occur, if at all

7. **Sec. 28.6/7 – Why wouldn't these changes require amendments to the Personnel Regulations? What impact will these changes have on effective management and discipline?**

The changes to Sections 28.6 and 28.7 modify so-called "Weingarten rights," which refers to a 1975 Supreme Court decision, *NLRB v. J. Weingarten*, in which the Court held that a unionized employee in the private sector has the right, upon request, to have a union representative present at an investigative interview that the employee reasonably believes might result in disciplinary action against the employee. Weingarten rights

have been written into the labor agreements between the County and each of the unions that represent County employees. In contrast, the Personnel Regulations do not provide non-bargaining unit employees with a right to representation under similar circumstances. Therefore, no changes are required to the Personnel Regulations. We believe that the impact of these changes on effective management and discipline will be de minimis.

8. **Sec. 41.3 – What is the effect of making the MCGEO representative an ex officio member? What would it change? When will we get the proposed legislation to implement this?**

Under this provision, the representative selected by MCGEO, and approved by the County Executive to the Board of Investment Trustees would be designated as an *ex-officio* member. Currently, under the statute, the Directors of OMB, Finance, and OHR, and the Council Staff Director enjoy *ex-officio* status. From MCGEO's perspective, this change would provide a measure of continuity since *ex-officio* members are not subject to a three-year term like other members of the Board of Investment Trustees. The proposed legislation was transmitted to Council on April 2.

9. **Sec. 41.6 – What is the cost in FY 10 and over time of the phantom COLA? How did you calculate it? Does it cover the ERS, RSP, and GRIP? When can we expect legislation to implement this?**

The so-termed phantom COLA has no fiscal impact in Fiscal Year 2010 for the reasons explained on page 8-5 of the County Executive's recommended budget. The County's actuary is in the process of providing an estimate of the cost beyond Fiscal Year 2010 to OMB. The phantom COLA covers Groups A, E, F, and H in ERS, but does not apply to RSP or GRIP. The proposed legislation was transmitted to Council on April 2.

10. **Appendix VI (c) (4) – What work schedules does Fleet use now? What is the fiscal impact of this change?**

This provision is consistent with the County Executive's recent initiative to allow more County employees to work a 4-day 10 hour work week. Almost 80 percent of the mechanics in Fleet Services, except for those who work on heavy equipment, currently work 4-10s. Under this provision, 9 of the 27 mechanics in heavy equipment will also be able to

work 4 -10s beginning in July 2009. We do not believe that this will have any fiscal impact.

OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

March 20, 2009

TO: Philip M. Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Memorandum of Agreement between the County and FOP

I have attached for the Council's review the agreement resulting from the recent collective bargaining discussions between the Montgomery County Government and the Fraternal Order of Police Montgomery County Lodge 35, Inc. The agreement reflects the changes that will be made to the existing Collective Bargaining Agreement effective through June 30, 2010. I have also attached a synopsis of the agreed upon items as well as the fiscal impact statement to assist in the Council's review of the document. The legislation and any necessary changes to the Personnel Regulations to accomplish these negotiated items will be forwarded to the Council shortly.

Attachments

IL: stc

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

This memorandum of understanding between the Montgomery County Government and the Fraternal Order of Police Montgomery County, Lodge 35, Inc., is intended to memorialize the concession agreement reached during direct negotiations in February 2009.

Please use the key below when reading this regulation:

Boldface	*Heading or defined term.*
Underlining	*Added to existing regulation by proposed regulation.*
[Single boldface brackets]	*Deleted from existing regulation by proposed regulation.*

The parties agree to amend the contract as follows:

* * *

ARTICLE 3 – AGENCY SHOP AND DUES CHECK-OFF

Section A. It shall be a continuing condition of employment with the County that employees covered by this Agreement: 1) shall become and remain members of the FOP in good standing to the extent of paying the FOP membership dues, or 2) in the alternative an employee shall be required to pay a service fee in the amount of twelve dollars ($12.00) biweekly for a total of three hundred twelve dollars ($312.00) per year for the duration of this contract. Such biweekly payments shall be deducted by the County. In the event of an FOP dues increase, the service fee may be increased on July 1 of any year of this Agreement upon sixty (60) days advance notice to the County. The increase shall not exceed the new dues amount. The FOP is responsible for certifying in writing all dues increases and the correct amount to be deducted for each bargaining unit member.

* * *

ARTICLE 8 – CONTRACT GRIEVANCE PROCEDURE

* * *

Section C. First Step of the Grievance Procedure. A grievance shall be presented in writing to the employer through its Office of Human Resources within twenty (20) calendar days after the president receives notice of the alleged contractual violation, or with reasonable diligence should have received notice of the violation, provided that if the grievance is presented under Section B of this article,

equivalent additional time shall be added. The FOP shall forward a copy of the grievance to the chief of police. The grievance shall be set forth with reasonable clarity. The employer, or designee, and representatives of the bargaining unit shall meet and discuss the grievance within thirty (30) calendar days after it is presented to the employer. The purpose of the meeting is to engage in dialogue in an effort to resolve the grievance. The Employer shall promptly and without unreasonable delay, provide to the FOP all documents and information reasonably requested by the FOP that reasonably have a bearing on the FOP's ability to make informed decisions in the processing, settlement, or dismissal of grievances at the earliest possible time. The FOP agrees that the Union and its representatives will maintain the confidentiality of all personnel records and related personnel information provided to the Union. Both parties shall designate representatives with settlement authority. The employer shall respond, in writing, to the grievance within seventy-five (75) calendar days after the grievance is filed.

* * *

Section F. Arbitration Procedures

1. Pre-Arbitration Procedures.

   a. Unless otherwise agreed to by the parties, arbitrations shall be set for the first Wednesday of every third month beginning with August 2007. The parties agree to establish "standing" hearing dates for unresolved matters under Articles 8 and 43 during the term of this agreement.

* * *

ARTICLE 14 – HOLIDAY LEAVE AND PAY

* * *

Section M. Personal Leave Days. At the beginning of each leave year, unit members will receive [one] four personal days to be used for any purpose. The days must be used in full days (no partial days) and must be used during the leave year. [If not used, the day is] All unused days are forfeited at the end of the leave year. Requests to use personal leave days will need to be scheduled and authorized in the same manner as annual leave is scheduled and approved. Personal leave benefit will be pro-rated for part-time employees.

It is understood that this additional Personal Leave will be taken and used without additional personnel costs or use of overtime to backfill for unit members on personal leave.

* * *

ARTICLE 15 – HOURS AND WORKING CONDITIONS

Section A. Hours and Overtime.

1. The regular workweek for patrol officers (excluding SAT), canine officers and officers assigned to the Telephone Reporting Unit shall be a four (4) day, forty (40) hour week. Except as provided at Paragraphs 3 and 6 of this Article or elsewhere in this Agreement, for [For] all other officers, including SAT, traffic, detective, administrative, and support personnel, the regular week shall be a five (5) day (at the discretion of the County) forty (40) hour week. Roll call shall be included in the regular workday. All hours worked in excess of a regular workday or forty (40) hours per week shall be compensated at time and a half except for:

* * *

6. Alternate Work Hours

   a. Bargaining unit employees working a five-day workweek may be eligible upon approval of the County to work a "compressed workweek" pursuant to County Administrative Procedure 4-34, effective January 27, 1994 (Appendix P). As provided in this procedure, the approval of a compressed schedule is at the sole discretion of the County and is not grievable or arbitrable.

   b. The option of a compressed work schedule for district detectives shall be at the discretion of the employee.

   c. Upon the determination by the Employer that the operating needs of the Department will be met by assigning some or all of the Special Assignment Teams to modified compressed work hours, the workweek of some or all of the Special Assignment Teams may be changed to the modified work hours attached as Appendix Q.

   d. Except as provided elsewhere by this Agreement, some or all other officers, including SAT, traffic, detective, administrative, and support personnel, may, by

agreement of the parties, work alternate flexible work hours and options, including 4 day /10 hours and telecommuting. Alternate flexible work hours and options under this subsection are encouraged but not required.

* * *

ARTICLE 19 – SICK LEAVE AND SICK LEAVE DONOR PROCEDURE

* * *

Section P. Sick Leave Donor Procedure

* * *

3. General Provisions.

* * *

e. An employee who resigns or is otherwise separated from County service shall not be permitted to donate leave upon notice of resignation, separation, or retirement. The unused sick leave of any employee separated from service that is subject to forfeiture shall be placed in a sick leave donation bank to be maintained by the Union for the use of employees in need of sick leave donations.

* * *

ARTICLE 25 – TRANSFERS

* * *

Section D. Notice of Transfer. Members of the unit shall be notified by their station captain and/or their bureau chief that they are under consideration for involuntary transfer or duty assignment and shall have a period of two (2) working days to reply as to any reasons why they do not wish to be transferred (reassigned). Such notification shall state the reason the employee is being considered for an involuntary transfer in writing with reasonable clarity. The captain and/or bureau chief will carefully consider any reasons submitted by the employee before proceeding with any transfer.

* * *

ARTICLE 31 – REOPENER

* * *

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

[Reopener for 2nd year of the contract in September 2007 (effective July 1, 2008 – June 30, 2010):

1. Article 24, Insurance Coverage and Premiums; and
2. Article 57, Retirement

Bargaining shall commence on or before September 1, 2007 and conclude on or before November 15, 2007. If there is no agreement, the impasse procedures set forth in the FLRA will be implemented. The parties agree to select Arbitrator Richard Bloch, if available, to serve as the impasse neutral.]

* * *

ARTICLE 35 – VEHICLES

* * *

Section B. Restrictions. Vehicles assigned to unit members who reside in Montgomery County or who reside within fifteen (15) miles of the County's borders (shown on the 1997 map, agreed to by the parties) shall be full-use vehicles. All benefits, rules and regulations which apply to PPVs shall apply to these vehicles. An officer whose domicile is outside, but near, the fifteen-mile limit from the County's borders may be granted permission, at the sole discretion of the chief administrative officer, or designee, to drive his/her assigned vehicle to and from his/her domicile. [Vehicles assigned to officers living outside of Montgomery County shall be restricted to "to and from" use only.]

* * *

Section F. Program Eligibility.

* * *

2. Officers must reside in Montgomery County or within fifteen (15) miles of the County's borders, to be eligible for the PPV program. [With the following exceptions, officers must reside in Montgomery County to be eligible for the PPV program.
   a. Officers in the Centralized Tactical Section and Canine Section, who live within 15 miles of the County line, shall be assigned a vehicle for "to and from" use only.
   b. [Vacant]]

* * *

4. All officers will be assigned marked police vehicles with the below-listed exceptions. This list may be changed upon the mutual agreement of the department and the union (side letter).

   a. Investigative Services Bureau (except Collision Reconstruction Unit, Special Operations Division and Alcohol Initiatives Section, who are assigned marked vehicles)

   b. Management Services Bureau (except recruiters)

   [c Canine officers described in § F.2.]

   c. [d.] Special Assignment Teams

   d. [e.] Tactical Section

   e. [f.] Office of Internal Affairs

   f. [g.] Office of Media Services

* * *

Section G. Program Regulations. The following regulations apply to all participating officers as well as those officers using PPVs on a temporary basis:

1. Officers will not take the vehicle out of the County except on official business or with the authorization of their district commander. Officers who reside outside Montgomery County, but within fifteen (15) miles of the County's borders will not take the vehicle outside the fifteen-mile limit from the County's borders, except on official business or with the authorization of their District Commander. The chief of police or his/her designee may grant continuing authorization to officers attending undergraduate or graduate programs in the Metropolitan area; however, other types of authorization will be on a case-by-case basis at the discretion of the chief of police or his/her designee. Such authorization shall not be unreasonably withheld.

* * *

Section Q. Single Officer Fleet Vehicle Program (See Side Letter)

1. Prior to July 1, 2009, the County will make single officer fleet vehicles available to all officers who are not eligible for the PPV program because they do not reside within

Montgomery County or within fifteen (15) miles from the County's borders. Such vehicles must be appropriate (marked or unmarked) for the officer's duty assignment.

* * *

ARTICLE 36 – WAGES

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

Effective the first full pay period following July 1, 2008, each unit member shall receive a wage increase of four (4) percent. Effective the first full pay period following July 1, 2009, each unit member shall receive a wage increase of four and one-quarter (4.25) percent. The four and one-quarter (4.25) percent wage increase scheduled to take effect in the first full pay period following July 1, 2009 shall be postponed, and shall not be effective during fiscal year 2010. Salary-based benefits shall not be diminished as a result of the postponement, and such benefits will be calculated as if the postponed wage increase had been received as scheduled.

* * *

Section H.

If the County government or MCPS negotiates higher compensation improvements for any of its employee organizations during FY-2010 and employees receive such higher compensation in FY-2010, those higher increases will be matched for bargaining unit employees. Any contract provisions negotiated with the IAFF that achieve a cost saving equivalent to the postponement of a 4% general wage adjustment during FY-2010 will not directly trigger an increase for bargaining unit members.

* * *

ARTICLE 43 – DISCIPLINE

* * *

Section C. Types of Disciplinary Actions.

* * *

3. *Suspension* The placing of an employee in leave without pay status for a specified period, not to exceed forty hours, for a specific act, infraction or violation of a policy or procedure. The Chief Administrative Officer may approve a suspension for more than forty hours, but under no circumstances may a suspension exceed the number of hours scheduled for one calendar month. An employee voluntarily may accept a forfeiture of annual leave in lieu of suspension on an hour-for-hour basis. An employee who accepts a forfeiture of annual leave in lieu of suspension may elect to have the forfeited sum (the salary-based value of the annual leave) donated to the Montgomery County Law Enforcement Officers' Relief Fund upon written notice to the employer.

* * *

ARTICLE 57 - RETIREMENT

* * *

Section M. Other Retirement Changes.

* * *

7. The parties agree that the Employer shall submit proposed legislation to the County Council providing that, "For the purposes of retirement benefit calculation, all bargaining unit members shall be credited at the annual salary amounts as if a 4.25 % general wage adjustment had been paid in FY-2010.

* * *

ARTICLE 61 – DIRECTIVES AND ADMINISTRATIVE PROCEDURES

* * *

Section D: Changes to directives, rules and procedures involving a procedural matter which is neither a mandatory subject of bargaining nor triggers bargaining over the effects of the exercise of employer rights. After transmittal of the administrative procedure, department directive, or rule to the FOP involving a procedural matter which is neither a mandatory subject of bargaining nor triggers

bargaining over the effects of the exercise of employer rights, the Union shall notify the employer of any comments for consideration by the employer, the Union has regarding the draft document within twenty-one (21) days. If the FOP does not respond, the employer shall follow-up in writing to the FOP. [If the FOP does not respond within fourteen (14) days of the follow-up, such failure to respond by the FOP shall waive the FOP's opportunity to submit comments for consideration.]

* * *

ARTICLE 66 - WELLNESS STUDY COMMITTEE.

[Reserved]

The parties shall establish a Wellness Study Committee consisting of three Union representatives and three Employer representatives to review health and wellness issues involving unit members of the MCPD. The committee shall meet on or before July 1, 2009, and shall, upon majority vote, issue a report on June 1, 2010.

OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

Joseph Adler
Director

March 13, 2009

Marc Zifcak
President
FOP Lodge 35

Dear President Zifcak:

Removal of Section F(c) from Article 35 is not intended to remove the employer's obligation to assign cars to officers in the Centralized Tactical Section and Canine Section.

Sincerely,

Sarah Miller
Labor Relations Manager

101 Monroe Street • Rockville, Maryland 20850 • 240-777-5000
www.montgomerycountymd.gov

Summary of Proposed Concession Agreement with FOP for FY 2010

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
1.	3, Dues	FOP dues increases will be certified in writing by the FOP	No	No	No		
2.	8, Grievances	County shall provide the FOP all documents and information requested by the union in regards to processing, settling, or dismissing grievances as soon as possible. The Union will maintain confidentiality of all personnel records and related personnel information provided. Parties agree to establish "standing" hearing dates for unresolved matters under Articles 8 and 43.	No	No	No		
3.	14, Personal Leave Days	Unit members will be granted 4 personal leave days. This additional leave will be used without additional personnel costs or use of overtime to backfill.	No	No	No		
4.	15, Alternate Work Hours	Except as provided, some or all other officers may work alternate flexible work hours and options, including 4/10s and telecommuting. These options are encouraged but not required.	No	No	No		
5.	19, Sick Leave Donor Procedure	Unused sick leave of an employee separated from service subject to forfeiture will be placed in a sick leave donation bank. Bank will be maintained by the Union for the use of employees in need of sick leave donations.	No	No	No		

Summary of Concession Agreement with FOP for FY 2010
Page 2

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
6.	25, Transfers	Notification will state the reason the employee is receiving an involuntary transfer	No	No	No		
7.	31, Reopener	Reopener for November 2009 on wages, service increments, other pays and differentials, and other benefits to be effective July 1, 2010.	No	No	No		
8.	35, Vehicles	Restrictions for PPV use extended to include officers who reside within 15 miles of the County's borders. Eligibility for PPV use extended to include officers who reside within 15 miles of the County's borders. Regulations on temporary use of PPV outside 15 miles of the County's borders will require authorization.	Yes	Yes	No		See County Executive's Recommended FY10 Operating Budget – page 8-6
9.	36, Wages	The 4.25% GWA for FY 10 will be postponed and will not be effective during FY 10. Salary benefits shall be calculated as if the 4.25% had be received	No	Yes	No		See County Executive's Recommended FY10 Operating Budget – page 8-6

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
10.	36, Wages	If County government or MCPS negotiates compensation improvements for any of its employees during FY-2010 and employees receive such higher compensation, those higher increases will be matched for FOP bargaining unit employees. IAFF negotiations that achieve a cost saving equivalent to the postponement of a 4% general wage adjustment during FY-2010 will not directly trigger an increase for FOP bargaining unit members.	No	No	No		
11.	43, Discipline	When an employee accepts a forfeiture of annual leave in lieu of suspension, he/she may elect to have the forfeited sum (the salary-based value of the annual leave) donated to the Montgomery County Law Enforcement Officers' Relief Fund upon written notice to the employer.	No	Yes	No		See County Executive's Recommended FY10 Operating Budget – page 8-6
12.	25, Retirement	County will submit proposed legislation to the Council regarding the retirement benefit calculation, allowing all bargaining unit members to be credited at the annual salary amounts as if a 4.25 % general wage adjustment had been paid in FY-2010.	No	Yes	No		See County Executive's Recommended FY10 Operating Budget – page 8-6
13.	61, Directives and Administrative Procedures	Removal of the language 14 day time limit for the FOP to respond to a follow up in regards to a change in administrative procedures, departments directives, or rules	No	No	No		

Summary of Concession Agreement with FOP for FY 2010
Page 4

No	Article/ Subject	Summary of change	Requires appropriation of funds	Present or future fiscal impact	Requires legislative change	Consistent with Personnel Regulations	Notes
14.	66, Wellness Study Committee	A wellness study committee will be established to review health and wellness issues of MCPD unit members Committee will consist of 3 Union representatives and 3 Employer representatives Shall meet by July 1, 2009 and issue a report by June 1, 2010	No	No	No		
15.	Side letter, PPV Assignment	Language removed from contract does not remove employer's obligation to assign PPVs to officers in the Centralized Tactical Section and Canine Section	No	No	No		

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MEMORANDUM

April 1, 2009 **041498**

TO: Philip M. Andrews, President, Montgomery County Council
Duchy Trachtenberg, Chair, Management and Fiscal Policy Committee

FROM: Joseph Adler, Director
Office of Human Resources

SUBJECT: Information Request – Collective Bargaining Agreement between the Montgomery County Government and the Fraternal Order of Police Montgomery County Lodge #35 Inc.

This is in response to the information request from Council staff dated March 23, and March 26, 2009.

It should be noted initially that this concession agreement resulted from direct "discussions" between the County and the Fraternal Order of Police Lodge #35 (FOP). Since the FOP had no obligation to bargain with the County about canceling or postponing the 4.25 percent wage increase scheduled to take effect in July 2009, the impasse and interest arbitration procedures mandated by the County's collective bargaining law were not applicable to these "discussions."

1. **What is the current number of employees in the FOP bargaining unit by rank (Police Officer III, Master Police Officer, Sergeant)?**

Police Officer Candidate (Academy)	16
Police Officer I	142
Police Officer II	114
Police Officer III	681
Master Police Officer	64
Sergeant	137
	1154

2. **Article 14 is amended to increase the number of Personal Leave Days from 1 to 4 (increase of 3). It is stated that this additional Personal Leave will be taken and used without additional personnel costs or use of overtime to backfill for unit members. Please describe**

how the Executive expects the no additional cost/no overtime provision to be implemented. In particular, please describe how Personal Leave can be taken by FOP bargaining unit members assigned to the district stations without backfilling the positions using overtime.

The use of these Personnel Leave Days is subject to approval by the officer's supervisor and the supervisor may deny a request to take a personal leave day if it would result in a need to backfill the position or use overtime. For example, if there are 8 patrols in a precinct that need to be covered, and there are 11 officers scheduled to work that shift on a particular day, the supervisor can approve a request by one of the 11 officers to use a Personal Leave Day. However, if there were only 8 officers scheduled to work that shift, then the supervisor would deny the request.

3. **Is this provision for 3 additional Personal Leave Days being passed through to Police Management?**

The increase in personal leave to 4 days is being passed through to Police Management. Currently, Police Management receives 3 personal leave days and they will get one more day to bring the entire department to 4 days.

4. **Please provide the 1997 map that shows the 15 mile radius that is the basis for the amendments to eligibility for the Personal Patrol Vehicle (PPV) Program.**

The boundary map is attached.

5. **Please explain why the Executive believes that the proposed amendments to eligibility that would allow Police Officers to use PPVs as full-use vehicles outside of Montgomery County is consistent with the program objective included in the Collective Bargaining Agreement: "*Program Objectives.* The goal of the PPV program is to provide the highest level of police service to the community by providing greater police presence on the streets and in the neighborhoods of Montgomery County and by enhancing the responsiveness of both on-duty and off-duty officers to calls for service."**

While the proposed amendments to eligibility that would allow police officers to use PPVs as full-use vehicles outside of Montgomery County do not further the objective of providing greater police presence on the streets and in the neighborhoods of Montgomery County, the

amendments do enhance the mobility and response time of officers living outside the County should they be needed immediately to return to the County to provide service. Whether off duty or on-call, the officer living outside the County would not have to drive to another site, either at their home or somewhere near the County line where the police vehicle may be parked, in order to change vehicles.

It should also be noted that collective bargaining is a-give-and-take process. Ideally, any agreed-to provision would provide equal benefit to the employees and to the department. In some instances, particularly where a trade-off may be involved, a provision may benefit one party more than the other.

6. **Please provide the back-up documentation to the recommendation that only $237,000 is required to implement this amendment to the PPV program. Please include the number of PPVs currently in the Department's fleet, the number of Police Officers currently eligible for the PPV program, the number of Police Officers eligible under the revised criteria of living within 15 miles of the Montgomery County border, the additional miles that are expected to be driven by Police Officers using their cars outside of, but within 15 miles of, the County border, and the FY10 assumption for cost per mile.**

There are 775 PPVs currently in the Department's fleet as well as 97 Single Officer Fleet Vehicles (SOFV). 302 FOP members or roughly 25 percent of the bargaining unit live outside Montgomery County. With respect to these 302 employees who live outside Montgomery County, 205 live within the 15 mile border as measured by the 1997 map and the other 27 reside in parts of Virginia, Pennsylvania, and West Virginia. Pending the availability of more detailed information, the Executive recommends a placeholder amount of $237,000 related to additional anticipated maintenance and fuel costs.

7. **Please clarify whether Police Officers who live in Montgomery County are now allowed to drive their PPV as a full use vehicle anywhere in the 15 mile radius shown in the 1997 map. Section G(1) retains the language that Officers will not take their vehicle outside the County except on official business or with authorization but then allows Officers who reside outside of Montgomery County, but within the borders shown on the map, to drive within the 15 mile radius. For**

example, can a Police Officer who resides in Germantown drive his/her PPV into Frederick or Howard County on personal business?

Under the current collective bargaining agreement, police officers who live in Montgomery County are not allowed to drive their PPV as a full use vehicle anywhere in the 15 mile radius shown in the 1997 boundary map. However, under the amendments which are subject to Council approval and become effective July 1, 2009, police officers would be allowed to do so. Thus, with respect to the example posed, as of July 1, 2009, an officer who resides in Germantown could drive the PPV on personal business into areas of Frederick or Howard County provided those areas are within the borders shown on the boundary map.

8. **Section H(1) states that, "While using the vehicle off-duty, officers will monitor the police radio on the frequency for the district in which the vehicle is being operated. Officers need not advise the dispatcher when going in or out of service; however, the officer will advise the dispatcher when responding to a call." What is the expectation for monitoring a police radio frequency while the car is being driven out of county? Is the officer expected to monitor the frequency of the district closest to their location? Is there an expectation that an officer will drive back into the county to respond to a call for service?**

There is the same expectation for monitoring the police radio frequency whether the vehicle is being driven inside or outside the county. The expectation that an officer will drive back into the county to respond to a call for service depends on the location of the vehicle. Thus, there is a higher expectation if the vehicle is a mile or two from the county border than if the vehicle is in say Harper's Ferry, West Virginia.

9. **If the revised PPV program is implemented should there be an amendment to Section M which requires an officer who moves out of county to turn their vehicle in to the Department's Fleet Manager before they move?**

If a police officer moves outside the boundary map radius rather than outside the County, the officer would be required to return the PPV to the Department's Fleet Manager.

10. **Is the new eligibility criteria for PPVs being passed through to Police Management?**

No. Currently, police managers who have PPVs can drive those vehicles within a 75 mile radius of the County Office Building.

11. **Please clarify the impact of the amendment on the Single Officer Fleet Vehicle Program. Please provide a copy of the side letter referenced in the title.**

The amendment on the Single Officer Fleet Vehicle Program simply codifies the existing practice. There are three side letters that reference Article 35, Vehicles, and they can be found in the Appendix to the current FOP collective bargaining agreement,

12. **Please confirm that, in Section H which has been added to *Article 36 – Wages,* the words "higher compensation improvements" refers only to wages and not to any other part of a total compensation package.**

The term "higher compensation improvements" is not per se limited to wages and would arguably include any element of compensation such as improved health insurance premiums.

13. **Are there expected to be any costs associated with the Wellness Study Committee for staffing or consultant reports?**

We do not contemplate any additional costs for staffing or consultant reports.

14. **What, if any, implications are there to the County's Risk Management program if full-use cars are assigned to Police Officers that live out-of-county but in the State of Maryland or to Police Officers that live out-of-county and out-of-state (Virginia, West Virginia, or the District of Columbia). What is the County's or the Officer's liability if the car is involved in a crash while being used for personal use?**

There are several liability implications with respect to driving a County vehicle out of state. For example, the Maryland Local Government Tort Claims Act provides a tort cap of $200,000 per person, $500,000 per accident for accidents that occur within the state if the employee is acting within the scope of employment and is sued. Since a police officer driving within the state can be called upon to act at any moment, even when off-duty, and can use special police powers, the officer is arguably acting within the scope employment whenever the vehicle is being driven

within the state. Under this law, the County is required to pay for the damages but the liability is, thus limited. However, the limits of this tort cap do not apply, if the accident occurs out of state. The Maryland cap does not apply in other states.

As for automobile insurance, the County maintains insurance liability coverage (through self-insurance) for its vehicles for the minimum amount required by law - $20,000/$40,000/$15,000. This insurance coverage goes with the vehicle and would cover the situation where the County, as the owner and insurer of the vehicle, is sued. However, in the case where the police officer is sued, there is a legal issue as to whether a police officer driving a PPV out of the state for personal use is nevertheless considered to be acting within the scope of employment because of the PPV provisions in the contract. If the officer is acting within the scope of employment when driving outside the state, then the county would be liable for any judgment in excess of the minimum liability coverage. And there would be no cap on liability. If not, the officer would be financially liable for a verdict in excess of the vehicle insurance coverage that would be paid by the County in the amount of $20,000 per person, or $40,000 for all claimants in one accident.