Agenda Item 11
May 13, 2009
Action

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney

SUBJECT: **Action:** Expedited Bill 18-09, Personnel – Retirement – Imputed Compensation

Management and Fiscal Policy Committee recommendation: no recommendation. MFP Committee to meet on May 13 at 9a.m.

Expedited Bill 18-09, Personnel – Retirement – Imputed Compensation, sponsored by the Council President at the request of the County Executive, was introduced on April 14, 2009. A public hearing was held on May 5. The Management and Fiscal Policy Committee reviewed the Bill at worksessions on May 8 and 11.

Background

Expedited Bill 18-09 would implement provisions of the most recent collective bargaining agreements negotiated by the Executive and the Municipal & County Government Employees Organization/United Food and Commercial Workers Union, Local 1994 (MCGEO) and the Fraternal Order of Police, Montgomery County Lodge 35 (FOP). The Bill would amend the definition of regular earnings to include certain imputed compensation under the Employees' Retirement System (ERS). Both of these collective bargaining agreements contain provisions that would "postpone" previously negotiated general wage adjustments (4.5% for MCGEO and 4.25% for FOP) during FY10 in recognition of the County's projected revenue shortfall.

The Bill would provide that the calculation of regular earnings used to determine an ERS retirement benefit for a Group A, E or H member, including those represented by MCGEO, must include the 4.5% general wage adjustment for FY10 as if the employee had received it on July 1, 2009. The Bill would not affect the retirement benefit for an employee represented by MCGEO who participates in the Retirement Savings Plan or the new Guaranteed Retirement Income Plan. The Bill would also make a similar 4.25% adjustment in the regular earnings used to calculate a retirement benefit for a Group F member, including those represented by the FOP. The Bill would take effect on July 1, 2009.

Public Hearing

The Council held a public hearing on Bill 18-09 on May 5. The only speaker, George Lacy of the Office of Human Resources (OHR), testified in support of the Bill on behalf of the Director of OHR and the Executive. See written testimony of Joseph Adler at ©11-12. Mr. Lacy testified that the Executive has recently reached a similar "concession" agreement with the International Association of Fire Fighters, Local 1664 (IAFF). Mr. Lacy requested the Council

to amend Bill 18-09 to implement the similar imputed compensation provision in the agreement with the IAFF.

May 8 and 11 Worksessions

The Committee recommended (3-0) amending the Bill to include Group G (Fire), but deferred action on the Bill due to a dispute between the Executive and MCGEO on the interpretation of this part of the concession agreement. President Renne asserted that the COLA credit was intended to apply to employees in the Retirement Savings (defined contribution) Plan, as well as the Employees Retirement System (defined benefit plan). OHR Director Adler disagreed with that assertion. When the Committee met briefly on May 11 to follow this item up, the parties had not settled that disagreement. The Committee deferred action on the Bill until the Executive reports back on the disagreement with MCGEO over the terms of their agreement.

Issues

1. What is the fiscal impact of the imputed compensation?

The Bill would permanently increase an eligible employee's earnings used to calculate retirement benefits throughout the employee's career. In other words, an eligible employee who retires 10 years from now would receive a retirement benefit based on a final salary that is greater than the actual salary the employee received. The Fiscal Impact Statement attached a letter from the retirement plan's actuary, Douglas Rowe of Mercer. See ©8-10. Mr. Rowe estimated the annual cost of the imputed compensation, using both a 40-year amortization period and a 15-year amortization period. Although OMB used the 40-year amortization schedule for its estimate of a $6.651 million annual cost, Mr. Rowe recommended the 15-year amortization schedule as more appropriate since the eligible employees cannot be expected to work for the next 40-years.

Although the Bill does not include Group G (Fire), Mr. Rowe estimated the annual cost including Group G. Mr. Rowe estimated an annual cost over 15-years at $10.673 million for Groups A, E, F, G, and H. The annual cost for all groups using the 40-year amortization schedule is $8.589 million. Mr. Rowe also estimated the annual cost of paying the employee's contribution, in addition to the employer's contribution, to be $775,000 for a 40-year amortization schedule. **Mr. Rowe concluded that the total actuarial liability for represented and non-represented employees in all 5 groups is $68.248 million.**

The costs to implement this Bill would not begin until FY11 because the plan actuary calculates the County's required contribution to the ERS with a one-year delay. The cost would be paid over time, beginning in FY11, for the number of years used to amortize the full cost. It effectively balances the FY10 budget at the expense of future budgets. Council staff asked the Council's actuary, Thomas Lowman of Bolton Partners, Inc., to review Mr. Rowe's fiscal analysis. See ©13. Mr. Lowman agreed with the analysis and also agreed that the 15-year amortization schedule is more appropriate. Mr. Lowman expressed concern over any additional burden on future liabilities of the ERS trust fund because of recent investment losses caused by the downturn in the equity markets. Mr. Lowman pointed out that the historic losses of the past year will begin to require additional employer contributions in FY11 and be fully reflected in

FY15. The additional liability created by this imputed compensation would only compound the County's future problem.[1]

The Executive pointed out that these costs (less the $775,000 cost to pick up the employee's contribution) would have been incurred if the general wage adjustment (GWA) was paid in FY10. The GWA has two components – cash paid in FY10, and increased retirement benefits paid in later years at retirement. The 3 "concession" agreements only "postponed" the first component. While intuition may lead one to believe that the second component is small, actuarial analysis shows otherwise.

Mr. Lowman described similar legislation before the Anne Arundel County Council that would limit the imputed compensation to the calculation of earnings for FY10 only. Under this method, a member's retirement benefit would only be increased if the member's final average earnings ("high 3 years") include FY10. Mr. Lowman projected this change to cost materially less. This would leave the decision whether this imputed compensation should be carried over to future years to future collective bargaining. Staff amendment 1 at ©18 would do this. **Committee recommendation (3-0):** defer action on the Bill in order to permit the Executive and MCGEO to resolve their dispute.

2. Is the imputed compensation in the Bill equitably distributed?

The Bill would only provide an imputed GWA to employees enrolled in the Employees Retirement System. It would not apply to employees in the Retirement Savings Plan (RSP) or the new Guaranteed Retirement Income Plan (GRIP). These Plans include represented and non-represented non-public safety employees hired on or after October 1, 1994. These employees would lose both components of the GWA. Since these employees participate in a defined contribution plan,[2] any imputed compensation for them would require an outlay of FY10 operating funds.

The recently negotiated "concession" agreement with the IAFF contains a parity provision which conditions the postponement of the IAFF unit member's GWA on the Executive returning his legally mandated pay increase and that "no general wage adjustment is given in FY10 to any appointed member of the Senior Management Team." See ©17. How would the County explain the equity in eliminating only part of the GWA for employees in the ERS and all of the GWA for other employees?

3. What did MCGEO and the Executive agree to?

The Memorandum of Agreement between MCGEO and the Executive contained the following language on this issue:

> 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. (emphasis added)

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[1] At a recent breakfast meeting, the Executive recommended that the Council consider the effect of its FY10 budget decisions on the projected deficit for FY11.

[2] The GRIP is a hybrid plan with a defined contribution and a guaranteed rate of return.

OHR Director Joe Adler explained at the May 11 worksession that the term "for the purposes of retirement benefit calculation" could only apply to a defined benefit plan in the ERS where final salary is a component in the calculation of the benefit. Mr. Adler pointed out that the benefit from the RSP is based upon the value of the employee's account at retirement and not calculated on the basis of final earnings. Mr. Renne relies upon the phrase "all bargaining unit members" for his conclusion that this provision applies to the MCGEO bargaining unit members who participate in the RSP.[3]

Despite the ambiguity in the language of the agreement, the Bill, as sent to the Council by the Executive on April 1, 2009, limited eligibility to ERS members in Groups A, E, F, and H. It does not appear that MCGEO notified the Executive of its different interpretation of the agreement until shortly before the May 8 Committee worksession. The first written notification of this dispute by MCGEO appears to be an email message dated May 11 attached at ©19-20.

The Committee deferred action on the Bill in order to give the Executive and MCGEO additional time to resolve their dispute. We did not receive a resolution of this dispute from the parties when this packet was published.

4. Should Group G be added to the Bill?

The Executive and the IAFF agreed to submit legislation to the Council providing for similar imputed compensation for members of the IAFF after Bill 18-09 was introduced. The Executive requested an amendment to this Bill adding Group G instead of a new Bill to accomplish this. The title of Bill 18-09 is broad enough to permit this amendment without re-advertisement and a new public hearing. **Committee recommendation (3-0):** amend the Bill to add Group G. See lines 15-19 of the Bill at ©2.

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[3] All non-public safety employees hired on or after October 1, 1994 participate in the RSP. We believe approximately two-thirds of the unit members are in the RSP.

Expedited Bill No. 18-09
Concerning: Personnel - Retirement – Imputed Compensation
Revised: May 11, 2009 Draft No. 4
Introduced: April 14, 2009
Expires: October 14, 2010
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

(1) amend the definition of regular earnings to include certain imputed compensation under the employees' retirement system; and

(2) generally amend the law regarding the employees' retirement system.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-35

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

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

Sec. 1. Section 33-35 is amended as follows:

Sec. 33-35 Definitions

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

* * *

Regular earnings: Except as otherwise provided, gross pay for actual hours worked, [exclusive of] not including overtime. Regular earnings for a Group A, E, or H member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4.5% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. Regular earnings for a Group F member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4.25% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. Regular earnings for a Group G member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. Regular earnings for an elected official is gross pay for services rendered to the County. Regular earnings must not exceed the limit under Internal Revenue Code Section 401(a)(17), as adjusted by the Internal Revenue Service. Gross pay must be used to determine benefits even if the County implements a pick-up plan under Section 414 of the Internal Revenue Code. Gross pay must be used to determine benefits even if a member has agreed to a reduction in earnings under:

(a) the County's deferred compensation plan under Section 457 of the Internal Revenue Code; or

28 (b) any statutory fringe benefit program sponsored by the County and
29 permitted by the Internal Revenue Code.
30 * * *
31 **Sec. 2. Expedited Effective Date.** The Council declares that this Act is
32 necessary for the immediate protection of the public interest. This Act takes effect
33 on July 1, 2009.
34 *Approved:*
35
36
Philip M. Andrews, President, County Council Date
37 *Approved:*
38
Isiah Leggett, County Executive Date
39 *This is a correct copy of Council action.*
40
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 18-09, Personnel – Retirement – Imputed Compensation

DESCRIPTION: The requested expedited legislation provides that for retirement purposes certain employees will be treated as though they received the scheduled general wage adjustment which has been eliminated.

PROBLEM: The proposed legislation accomplishes the changes contained in the Memorandum of Agreement between the Montgomery County Government and the Municipal & County Government Employees Organization/United Food and Commercial Workers Union Local 1994 and the Fraternal Order of Police Montgomery County Lodge 35 that was negotiated pursuant to concession agreements for the current collective bargaining agreements.

GOALS AND OBJECTIVES: To implement provisions of negotiated concession agreement and pass through by treating employees in Groups A, E, F, and H as though they received scheduled general wage adjustments for retirement purposes.

COORDINATION: Office of Human Resources

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: See County Executive's Recommended FY10 Operating Budget

EVALUATION: n/a

OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

April 1, 2009

TO: Philip M. Andrews President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Expedited Bill to Amend the Employees' Retirement System

The attached expedited bill would provide that for retirement purposes, employees in Groups, A, E, F, and H will be treated as though they received the scheduled general wage adjustments which have been eliminated. This bill stems from the negotiated agreements with the Municipal & County Government Employees Organization/United Food and Commercial Workers Union Local 1994 and the Fraternal Order of Police Montgomery County Lodge 35.

Attachments

IL: stc

BILL 18-09

NAN
CC
SBF
LL
BD
MF
AM

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM 042107

May 4, 2009

TO: Phil Andrews, President, County Council

FROM: Joseph F. Beach, Director, Office of Management and Budget

SUBJECT: Expedited Bill 18-09, Personnel – Retirement – Imputed Compensation

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

LEGISLATION SUMMARY

The proposed legislation implements the Memorandums of Agreement negotiated by the County Executive and the Municipal and County Government Employees Organization/ United Food and Commercial Workers Union, Local 1994 (MCGEO) and the Fraternal Order of Police, Lodge 35 (FOP). The Memorandums of Agreement contain provisions eliminating the previously negotiated general wage adjustments for FY10. The proposed legislation provides that for purposes of the retirement benefit calculation under the Employees' Retirement System (ERS), employees in Groups A, E, F, and H of the ERS will be treated as though they received the FY10 general wage adjustment.

FISCAL SUMMARY

The County's actuary estimates an annual cost of imputed compensation of $6.651 million for Groups A, E, F, and H. As noted in the FY10 recommended budget, the proposed legislation does not affect the actuarially determined FY10 retirement contribution. According to the actuary, the estimated FY11 annual contribution would be $6.651 million greater than it would otherwise be without the proposed legislation. It is important to note that, in the absence of the concession agreements with the subject employee representative organizations, the County would have been required to increase its contribution due to the previously agreed to general wage adjustment. Reduction of the planned retirement benefit was not a concession obtained in the recent amendments to the County's labor agreements.

(6)

However, when the legislation is considered in combination with the elimination of the previously negotiated wage adjustment, retirement benefits don't change, but the obligation for employee contributions on the imputed compensation shifts to the County. The actuary estimates this shift to cost $585,000 annually for employees in Groups A, E, F, and H. This is a cost to the ERS because employee contributions are not made on the imputed pay. The $585,000 cost is a component of the total annual estimated cost of $6.651 million of the legislation.

The County may incur additional system programming costs associated with implementing this provision which cannot be quantified at this time because the related business process and technical requirements are not sufficiently defined.

The following contributed to and concurred with this analysis: Wes Girling, Office of Human Resources, Karen Hawkins, Department of Finance, and Alex Espinosa, Office of Management and Budget.

JFB:df

c: Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
Joseph Adler, Director, Office of Human Resources
Jennifer Barrett, Director, Department of Finance
Brady Goldsmith, Office of Management and Budget

Douglas L. Rowe, FSA, MAAA, EA
Principal

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April 27, 2009

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

Confidential
Via Electronic Mail

Subject: Imputed Compensation Pension Cost

Dear Wes:

This letter summarizes the cost calculations you requested for the imputed compensation bill. The calculations are based on the July 1, 2008 actuarial valuation data for group A, E, F, G and H members. The actuarial assumptions and methods and plan provisions are the same as those used in our July 2008 actuarial valuation report except for the assumptions and incentive provisions noted below. Please note that actual cost of the imputed compensation will differ based on the number of individuals that are active as of July 1, 2009.

We have projected all costs from the July 1, 2008 valuation date to the effective date of July 1, 2009 using standard actuarial approximation techniques. By cost/savings, we mean the change in Normal Cost and an amortization of any changes in unfunded liability unless otherwise indicated. Cost/savings will change over time as experience develops.

Cost Calculated From Two Viewpoints

We have calculated the cost of imputing pay from two viewpoints – just the legislation (which increases benefits by imputing pay) that we were provided, and as a package which takes away previously negotiated pay increases, but then calculates pensions as if those pay increases had occurred. The cost for the second viewpoint is that employee contributions are not made on the imputed pay.

Other Considerations – Legislation Only Viewpoint

We have recommended that the County consider a shorter amortization period for future plan improvements in order to restore the funded ratio more quickly following a benefit improvement and in order to better align the cost of the improvement with the service of participants receiving an increase for service already performed. Applying that concept to this retirement program might result in a 10 to 20 year amortization period. We show detailed results below for the County's traditional 40 year amortization period.

The dollar impact of the Normal Cost increase on the County's contribution will tend to increase as employees near retirement, but decrease as the number of affected employees decreases over time. Please let me know if you would like a projection to quantify this pattern. Everything else being equal, the cost impact will increase (decrease) if actual future pay increases exceed (trail) assumed pay

increases. The amortization payment will remain level for the chosen period – 40 years unless a shorter period is chosen.

Other Considerations – Package Viewpoint

Lower employee contributions also reduce "refund" benefits (e.g., the return of employee contributions to nonvested terminated employees) but this impact is negligible compared to the contributions themselves. Employee contributions are subtracted from the total required contribution each year to determine the County's contribution. The reduced subtraction (which results in a higher County contribution) due to the package will decrease over time as employees on July 1, 2009 leave employment.

Plan Provisions

- Employees on July 1, 2009 in groups A, E, and H would receive benefits as if their gross pay increased 4.50% on July 1, 2009 and remained 4.50% higher than actual pay for the remainder of their careers. This does not include benefits that are based on employee contributions.
- Employees on July 1, 2009 in group F would receive benefits as if their gross pay increased 4.25% on July 1, 2009 and remained 4.25% higher than actual pay for the remainder of their careers. This does not include benefits that are based on employee contributions.
- Employees on July 1, 2009 in group G would receive benefits as if their gross pay increased 4.00% on July 1, 2009 and remained 4.00% higher than actual pay for the remainder of their careers. This does not include benefits that are based on employee contributions.
- This legislation does not apply to Retirement Savings Plan or Guaranteed Retirement Income Plan participants.

Estimated Costs of Proposed Changes

Annual Costs using 40-year amortization for represented and non-represented members.

	Legislation Alone	Package
Group A	$1,656,000	$155,000
Group E	$ 975,000	$ 90,000
Group F	$2,233,000	$185,000
Group G	$1,938,000	$190,000
Group H	$1,787,000	$155,000
Total	$8,589,000*	$775,000

Numbers may not add up due to rounding.

* The total would increase to $10,673,000 if a 15 year amortization period is used.

Presumably, you want to use one column above or the other, depending on the viewpoint. You would not want to add the columns.

Increase in Actuarial Accrued Liability for represented and non-represented members

	Legislation Alone	Package
Group A	$14,166,000	Insignificant Decrease
Group E	$ 7,094,000	
Group F	$16,968,000	
Group G	$14,962,000	
Group H	$15,058,000	
Total	$68,248,000	

Numbers may not add up due to rounding.

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

Sincerely,

Douglas L. Rowe

Douglas L. Rowe, FSA, MAAA, EA
Principal

Copy:
Aquil Ahmed, Mercer

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

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OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

Joseph Adler
Director

MEMORANDUM

May 5, 2009

TO: Philip Andrews, President
Montgomery County Council

FROM: Joseph Adler, Director
Office of Human Resources

SUBJECT: Testimony for Public Hearing on Tuesday, May 5, 2009

Thank you for the opportunity to testify. I am here to express my support for Expedited Bill 18-09 and Bill 19-09. These two bills are necessary to implement the agreements between the County and MCGEO, UFCW Local 1994, the exclusive representative of the OPT/SLT bargaining units, and between the County and the Fraternal Order of Police Montgomery County Lodge #35.

In the concession agreement between the County and MCGEO, the Union agreed to postpone the 4.5 percent general wage adjustment that would have gone into effect for bargaining unit employees in July 2009. Similarly, in the concession agreement with the FOP, the Union agreed to postpone the 4.25 percent wage increase scheduled to take effect in July 2009. The purpose of Expedited Bill 18-09 is to treat for retirement purposes Group A, E, F, and H Members of the Employees' Retirement System as though they received the scheduled general wage adjustment in their gross pay effective in July 2009.

Bill 19-09 amends the law regarding the composition of the Board of Investment Trustees by providing that the representative selected by MCGEO, and approved by the County Executive, to the Board of Investment Trustees be designated as an *ex-officio* member. Currently, under the statute, the Directors of OMB, Finance, and OHR, and the Council Staff Director have *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 recently concluded bargaining agreement between the Montgomery County Government and the Montgomery County Career Fire Fighters Association, International

Association of Fire Fighters, Local 1664 provides that Group G Members of the Employees' Retirement System be treated for retirement purposes as though they received the scheduled general wage adjustment in their gross pay effective in July 2009. The IAFF agreement also includes a proviso that the Employer will submit legislation to the Council providing the representative selected by the IAFF, and approved by the County Executive, to the Board of Investment Trustees be designated as an *ex-officio member*. Since these negotiated items are identical to that contained in Expedited Bill 18-09 for the FOP and MCGEO, and Bill 19-09 for MCGEO, the County Executive has recommended that the Council consider amending these bills to include the applicable provisions in the IAFF agreement rather than by acting through separate legislation.

Thank you for your time and attention. I would be pleased to answer any questions you may have.

MEMORANDUM

DATE: May 6, 2009

TO: Management and Fiscal Policy Committee

FROM: Thomas Lowman, Bolton Partners, Inc. TL

SUBJECT: Comments on the Pension Amendment/definition of compensation

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I have reviewed the May 4th memo from Joseph Beach to Phil Andrews, and Mercer's April 27th letter to Wes Girling. These both addressed the pension cost associated with changing the definition of compensation due to elimination of previously negotiated wage increases. The higher annual pension cost of $8.589 million looks reasonable, given that the active liability is about $1.5 billion.

I was asked to comment on the amortization period. I agree with the fourth paragraph of Mercer's April 27th letter that a 10-20 year amortization period would be more appropriate. Basically, there is no good reason to fund this beyond the time when those benefiting from the change will be working. Thus, Mercer's 15 year amortization cost of $10.673 million is more appropriate.

My understanding is that this change is permanent for all current employees; this means that someone retiring 20 years from now, will have their pension based on a higher pay amount then they actually will be receiving in 17-20 years (however, someone hired on 7/1/09 will not have such an advantage). There are reasons to argue an alternative position: any change of this sort should apply as an add-on but only to pay earned during the duration of the union contract (when the additional pay increase was eliminated). This more limited design would have a materially lower cost and can legitimately be said to addresses the same issue (even if leaving open the need to have future negotiations over whether the pay levels have "returned" to the appropriate level).

My understanding is that Montgomery County is not alone in considering this issue. Anne Arundel County has also prepared proposed legislation. However, Anne Arundel County's proposal only increases compensation in FY10. If someone's final average pay does not include pay in FY10 (most will leave far enough into the future that it will not include FY10), there would be no impact on their pension. This makes the cost materially less than what Mercer determined for the more generous proposal.

My main concern is over the funded status of the plan and the projected contribution increases. The plan's recent serious investment losses will start showing up in FY11 contributions and be fully reflected by FY15. The current FY10 contribution of $115 million, will likely climb by tens of millions. I appreciate the reason for passing a bill of this nature, but it should not be passed without a full appreciation of the future funding demands that will arrive shortly (and ideally a belief that these increases can be handled).

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

May 4, 2009

TO: Philip M. Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Memorandum of Agreement between the County and IAFF

I have attached for the Council's review the agreement resulting from the recent collective bargaining discussions between the Montgomery County Government and the Montgomery County Career Fire Fighters Association, International Association of Fire Fighters, Local 1664. The agreement reflects the changes that will be made to the existing Collective Bargaining Agreement effective through June 30, 2011. I have also attached a synopsis of the agreed upon items to assist in the Council's review of the document. A fiscal impact statement will follow.

We have also agreed with the IAFF to file a joint motion with Labor Relations Administrator Andrew Strongin seeking to vacate his March 28, 2009 decision in the "Budget Dispute" case.

Since the legislation necessary to accomplish these negotiated items is identical to that contained in Expedited Bill 18-09 and Bill 19-09, currently before the Council, I recommend that the Council consider amending these bills to include the applicable provisions in the IAFF agreement rather than by acting through separate legislation. Specifically, I propose that Expedited Bill 18-09 be amended to include Group G Members. The purpose of Expedited Bill 18-09, which flows from the County's recent agreements with the FOP and MCGEO, is to treat for retirement purposes Group A, E, F, and H Members of the Employees' Retirement System as though they received the scheduled general wage adjustment in their gross pay effective in July 2009. We have agreed to do the same for fire fighters. I also propose that Bill 19-09, which changes the law regarding the composition of the Board of Investment Trustees to provide that the representative selected by MCGEO, and approved by the County Executive, to the Board of Investment Trustees be designated as an *ex-officio member*, be amended to include the representative selected by IAFF.

I want to express my deep appreciation to the IAFF and its leadership for recognizing the fiscal crisis facing Montgomery County, working constructively with the County, and agreeing to make sacrifices that are in the best interests of the residents of the County.

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

This memorandum of understanding between the Montgomery County Government and the Montgomery County Career Fire Fighters Association, International Association of Fire Fighters, Local 1664, is intended to memorialize the concession agreement reached during direct negotiations in April 2009.

The parties agree to amend the contract as follows:

1. *FY10 Wages*: Article 19 is amended to add a new subsection to Section 19.1

   F. The 4 percent wage increase scheduled under Section 19.1 C. to be effective the first full pay period on or after July 1, 2009 shall be postponed and shall not be effective during FY10. 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.

2. *Personal Days:* Article 6 is amended to include a new Section 6.15

   Section 6.15 <u>Personal Leave Days</u>

   At the beginning of each leave year, each bargaining unit member assigned to a 2,496-hour work year shall be credited with 48 hours of personal leave to be used for any purpose. Each bargaining unit member assigned to a 40- or 42-hour work week shall be credited with a prorated number of hours of personal leave. The days must be used in full shifts (no partial shifts) and must be used during the leave year. 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. 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.

3. *Compensatory Leave:* Article 49 is amended include a new Section 49.4

   Section 49.4 <u>Compensatory Leave Credit</u>

   Each bargaining unit member assigned to a 2,496-hour work year and at Step O, LS1 or LS2 on the pay scale shall, on a one time basis, be credited with 72 hours of compensatory leave on their service increment date. Each bargaining unit member assigned to a 40- or 42-hour work week and at Step O, LS1 or LS2 on the pay scale in FY10 shall, on a one time basis, be credited with a prorated number of hours of compensatory leave on their service increment date. This compensatory leave must be used as leave.

4. *Sick Leave Donation Bank.* Article 7 is amended by adding a new sentence at the end of Section 7.9 to read: "Accumulated sick leave must be forfeited upon separation for any purpose other than retirement. Accumulated sick leave is creditable for retirement purposes as provided in the employee retirement system of Montgomery County. **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 MCCFFA for the use of employees in need of sick leave donations."

5. *Notice of Charges.* Amend the first sentence of Section 30.3.C. to read as follows: "Prior to an examination, the Employer agrees to inform the Union representative in **writing (which may be done by email communication)** of the subject of the examination." Amend Section 30.5.C. to read as follows: "The employee, **and at the employee's discretion, the union,** shall be notified by the investigating official **in writing** of the alleged charges or conduct for which the employee is being investigated upon notification of interview/examination being scheduled. **An email communication is sufficient to meet the writing requirement under this section."**

6. *Board of Investment Trustees.* Article 51 is amended by adding a new Section F.

   F. Prior to September 1, 2009, the Employer shall submit legislation to the County Council providing that the representative selected by MCCFFA and approved by the County Executive to serve on the Board of Investment Trustees shall be designated as an *Ex Officio* member.

7. *Retirement Benefit Calculation.* Article 51 is amended by adding a new Section G.

   G. Prior to September 1, 2009, the Employer shall submit legislation to the County Council providing that, for purposes of retirement benefit calculation, all bargaining unit members shall be credited at the annual salary amounts as if the postponed 4 percent general wage increase had been paid in FY10.

8. *Access to Centers.* Article 35 is amended by adding a new Section 35.6

   Section 35.6 <u>Access to Centers</u>

   All bargaining unit employees will be granted access to, and use of, recreation center gym/weight rooms and aquatic centers free of charge. In order to receive such access the bargaining unit members shall follow the administrative process established by the parties.

9. *LRA Decision.* The Union has filed an appeal of LRA Strongin's March 28, 2009 Decision and Award. The parties shall file a joint motion and proposed Order (attached as Exhibit A) with LRA Strongin asking him to vacate the March 28, 2009 Decision and Award. If he signs the Order vacating the Decision and Award, the Union will voluntarily dismiss its appeal. The parties agree that they will neither cite nor attempt to rely on the vacated decision in any way. In the event that LRA Strongin does not issue an Order vacating the March 28, 2009 Decision and Award, the parties shall file a joint motion and proposed Order (attached as Exhibit B) with the Circuit Court requesting the Court to vacate the LRA Decision and Award and to dismiss the appeal. In the event that the Circuit Court does not enter the Order, the Union will pursue the appeal.

10. *Donation of Forfeited Annual Leave.* Article 30 is amended to add a new Section 30.8

    Section 30.8 <u>Donation of Forfeited Annual Leave</u>

    An employee who accepts a forfeiture of annual leave in lieu of other discipline may elect to have the forfeited sum (the salary-based value of the annual leave) donated to the Union's Welfare and Benefit Fund upon written notice to the employer.

11. *Employee Recognition.* Article 33 is amended by adding Section 33.D

Section 33.D IAFF members who are bargaining unit employees shall be authorized to wear and display the IAFF logo on all uniforms issued or authorized by the County. The IAFF Logo shall be in the form of either a patch, pin, silk screened or embroidered logo. In addition all IAFF members who are bargaining unit employees shall be authorized to wear an IAFF logo patch on all County issued turnout gear and an IAFF logo helmet sticker on all issued or approved structural fire fighting helmets. The specific IAFF logos authorized under this section shall be determined by the Union. Location and size of the union insignia identified in this section will be determined by the Union, subject to the reasonable approval by the Fire Chief. All costs associated with the installation of the union insignia will be at the expense of the employee.

12. *Driver Disposition Policy.* A Driver Disposition Policy shall be developed no later than January 1, 2010 consistent with the April 1, 2005 memorandum from Chief Thomas W. Carr, Jr. to President John Sparks.

13. *Good Faith.* The Parties agree to fully support all legislative proposals drafted and submitted pursuant to this Agreement to ensure their approval by the Montgomery County Council.

14. *Parity.* Article 19 is amended to add a new subsection to Section 19.1

G. The parties recognize the economic situation facing the County, particularly the shortfall in projected revenues for FY10. The County is calling on all of its employees to come together to deal with this grave situation. The Union and the County Executive, on his own behalf and on behalf of the non-represented employees in County leadership positions, are willing to make financial sacrifices in FY10, and the parties call on each member of the County Council to make similar sacrifices. Postponement of the general wage increase described in Paragraph 1 above shall be rescinded and the County Executive agrees to promptly seek funding from the County Council to retroactively pay such general wage increase unless (a) the County Executive returns to the County the net mandated pay increase required to go into effect in December 2009 under Section Sec. 1A-106 of the Code and (b) no general wage adjustment is given in FY10 to any appointed member of the Senior Management Team. The Parties recognize and agree that this provision does not impact salary schedule step increases.

Staff Amendment 1

Amend lines 7-15 as follows:

To calculate regular [[Regular]] earnings for FY10 only for a Group A, E, or H member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4.5% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. To calculate regular [[Regular]] earnings for FY10 only for a Group F member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4.25% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39.

Drummer, Bob

From: Trachtenberg's Office, Councilmember
Sent: Monday, May 11, 2009 3:24 PM
To: Drummer, Bob
Subject: FW: ERS and RSP

Terry O'Neill
Chief of Staff to Councilmember Duchy Trachtenberg
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850
240-777-7965 (office)
240-777-7989 (fax)
301-233-8582 (cell)
terry.oneill@montgomerycountymd.gov

-----Original Message-----
From: Gail H [mailto:gheath@mcgeo.org]
Sent: Monday, May 11, 2009 12:09 PM
To: Ike Leggett; Firestine, Timothy; Adler, Joseph; Andrews' Office, Councilmember; Berliner's Office, Councilmember; Ervin's Office, Councilmember; Knapp's Office, Councilmember; Leventhal's Office, Councilmember; Floreen's Office, Councilmember; Trachtenberg's Office, Councilmember; Elrich's Office, Councilmember
Cc: Gino Renne; cbutsavage@butsavage.com; Bob Stewart; gailh@mcgeo.org
Subject: Fw: ERS and RSP

It is with great regret I must inform you of my disappointment in the County's change of position/reneging with regard to this section of the compromise agreement. Consequently, I must inform you that the County's position of this matter is inconsistent with what our membership ratified. In accordance with our ratification process we must inform you that the compromise agreement between UFCW Local 1994 MCGEO and Montgomery County Government is null and void. Please contact us immediately to discuss what steps can be taken to reach agreement in the delay of our 4.5% cost of living.

Gino

----- Original Message -----
From: Gino Renne
To: Gail H
Sent: Mon May 11 10:51:26 2009
Subject: FW: ERS and RSP

-----Original Message-----
From: Adler, Joseph [mailto:Joseph.Adler@montgomerycountymd.gov]
Sent: Monday, May 11, 2009 8:11 AM
To: Gino Renne
Cc: Boucher, Kathleen; Lacy, George; Girling, Wes
Subject: ERS and RSP

Gino
The County is not able to extend the imputed GWA to members of the RSP. Our estimate is that this would cost approximately an additional $1.5 million --all of which would have to come out of the operating budget. I realize that we have an honest difference of opinion on this, but our aim in making this concession was to keep ERS members whole since their final pension payment is dependent upon salary and years of service, and not upon investment performance as is the case with RSP members.

As you are aware, even the ERS portion of the current MOU's is generating opposition from staff and members of the County Council. Adding another costly item during this time of

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budget strain could well serve to reject the imputed GWA clause.

Joe Adler