

Resolution No.: 16-99
Introduced: April 24, 2007
Adopted: April 24, 2007

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Management and Fiscal Policy Committee

SUBJECT: Collective Bargaining Agreement with Fraternal Order of Police

Background

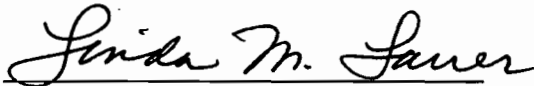
1. Section 510 of the County Charter requires the County Council to provide by law for collective bargaining with binding arbitration with an authorized representative of the County police officers.
2. Chapter 33, Article V of the County Code implements Section 510 of the Charter and provides for collective bargaining with representatives of certain police officers and for review of the resulting agreement by the County Council.
3. The County Executive and the Fraternal Order of Police (FOP) have agreed on an agreement for the 3-year period beginning July 1, 2007. That agreement is attached to this Resolution.
4. The County Executive has submitted to the County Council the terms and conditions of the collective bargaining agreement that require or may require an appropriation of funds or changes in any County law or regulation.
5. The Management and Fiscal Policy Committee considered the agreement on April 16 and April 19, 2007, and recommended approval of all terms and conditions.
6. The County Council has considered these terms and conditions and is required by law to indicate on or before May 1 its intention regarding the appropriation of funds or any legislation or regulations required to implement the agreement.

Action

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

The County Council intends to appropriate the funds and approve the changes in law or regulations necessary to implement the police bargaining unit collective bargaining agreement attached to this Resolution, from July 1, 2007, through June 30, 2010.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

Memorandum of Agreement between the Montgomery County Government
and the Fraternal Order of Police, Lodge 35,
for Contract years July 1, 2007, through June 30, 2010

The Montgomery County Government (Employer) and the Fraternal Order of Police, Lodge 35 (Union), agree that their collective bargaining agreement effective July 1, 2004, through June 30, 2007, is extended in full force and effect for the three-year term July 1, 2007, through June 30, 2010, subject to the amendments shown on the following pages.

Please use the key below when reading this document:

Underlining

Added to existing agreement.

[Single boldface brackets]

Deleted from existing agreement.

* * *

Existing language unchanged by parties.

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Article 2 Administrative Leave

Section A. The president of the FOP shall receive [1040] 1092 hours of administrative leave for each year of this Agreement.

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Article 3 Agency Shop and Dues Check-off

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Section H. FOP Deferred Compensation Plan. The Fraternal Order of Police, Lodge 35, may establish and administer an eligible deferred compensation plan under Section 457 of the Internal Revenue Service Code. The parties acknowledge and agree that the County shall not function as a plan fiduciary or sponsor and will not be responsible for the establishment, administration, and regulatory compliance of said plan.

Upon successful establishment of said plan by the FOP, the County shall remit unit member contributions to said plan's third party administrator. Said contributions shall be authorized by the unit member with the FOP or said plan's third party administrator, who will provide the County with data, in a format approved by the County, required to remit said contributions to said plan's third party administrator. The County's liability and responsibility shall be limited solely to the transfer of said contributions. At that time, unit members may no longer contribute to the County's deferred compensation plan.

If the unit member elects to transfer his/ or her funds from the County's deferred compensation plan, the unit member shall be responsible for costs (e.g., back load fees) associated with such transfer. Transfers of assets from the County's deferred compensation plan must comply with all IRS rules and regulations and any such transfer shall be deemed elected by the unit member. No assets will be transferred from the County's deferred compensation plan into said plan, unless said plan is eligible to receive said transfers.

The FOP must provide the County reasonable assurance that said plan meets the definition of an eligible deferred compensation plan under Section 457 of the Internal Revenue Code. Such assurance shall be required upon establishment of said plan and periodically thereafter as requested of the County by its independent auditors. The County shall not be required to remit contributions to said plan's third party administrator in the absence of such reasonable assurance.

Upon notice by the Union that the Union deferred compensation plan is prepared to accept auto enrollments, the Employer agrees to withhold from unit members' biweekly pay such contributions as specifically directed by the Union or its administrator. Union or its administrator is responsible for notifying Employer of any contribution change. Employees may opt out of any auto enrollment program at anytime in accordance with terms established by the FOP and such opt out requests shall be transmitted to the employer by the Plan or its administrator for processing consistent with existing protocol for contribution changes. The Union will administer the auto enrollment arrangement in accordance with all applicable state and federal laws, including but not limited to:

- preparing and distributing all required notices on a timely basis,
- processing withdrawals of contributions made within the first 90 days of participation
- establishing default investments

Article 5 Tech Pay

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Section C. Multilingual Pay Differential.

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

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

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

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

2. *Certification.* Prior to becoming eligible for the pay differential, the [unit member] employee must successfully pass a language certification examination administered by the [County Personnel Office] Office of Human Resources. Employees will initiate requests for multilingual certification through the County's Office of Human Resources. The Employer will contact employees to schedule an examination, which, under normal circumstances, will be conducted within thirty (30) days after the employee requests certification. Testing will

¹ Section H of Article 3 was eliminated by operation of Article 48 *Action by the Montgomery County Council*, as a result of action taken by the Montgomery County Council in Resolution No. 14-851, May 1, 2001. [Subject to Art. 31.]

consist of a performance examination for those unit members who claim basic multilingual skills. A written examination assessing comprehension/translation skills will also be administered for those [unit members] employees claiming advanced skills. The designation of a skill level is non-grievable and non-arbitrable. In the event the employee fails the examination, the employee may request a second examination ("retest") with a different test administrator. The retest will be conducted promptly. If the employee fails the second examination, the employee may request a third examination within sixty (60) days after the second failure. The examination will be conducted promptly. In event the employee fails the third examination, the employee may not request any additional examinations for six (6) months. This program shall not be administered in an arbitrary, capricious, or discriminatory manner.

Upon certification by the [Personnel Office] Office of Human Resources, language translation/interpretation skills will be made a performance guideline on the officer's performance appraisal form.

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

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

4. *Overtime.* Certified officers will be paid overtime on the multilingual differential only for use of the skill during hours subject to overtime pay, i.e. in excess of the regular workday or workweek.
5. *Transfer.* It is recognized that once [a member] an employee is designated in a skill level, he/she may be transferred to an assignment where the skill is needed.

Article 6 Clothing Allowance

Section A. Effective July 1, 2007 the clothing allowance will be the following amounts for eligible employees:

Category	Annual Amount
Formal & Variety	[\$1141] <u>\$1176</u>
SAT	[735] <u>\$758</u>
Casual	[485] <u>\$500</u>
Partial	[333] <u>\$343</u>

Effective July 1, 2008 the clothing allowance will be the following amounts for eligible employees:

Category	Annual Amount
Formal & Variety	<u>\$1213</u>

SAT	<u>\$782</u>
Casual	<u>\$516</u>
Partial	<u>\$354</u>

Effective July 1, 2009 the clothing allowance will be the following amounts for eligible employees:

Category	Annual Amount
Formal & Variety	<u>\$1251</u>
SAT	<u>\$806</u>
Casual	<u>\$532</u>
Partial	<u>\$365</u>

All Unit members who wear non-uniform clothing to be placed in a category under this section. Categories are to be agreed by the parties.

Article 7 Communications Facilities

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Section C. Use of Facilities. The FOP shall:

1. Have use of police department FAX machines.
2. Continue to be assigned a mailbox within the County's E-Mail system to be used for Lodge business. Unit members may use the E-Mail system for official Lodge business.
3. Continue to have an electronic bulletin board for the posting of messages related to Lodge 35 business.
4. Any costs incidental to maintaining the E-Mail system shall be paid by the FOP.
5. Usage of the Employer-provided Internet, Intranet, or E-Mail by bargaining unit employees through the use of Employer owned equipment shall be in conformance with county policies governing such use. [Appendix H.]
6. Access to police facilities shall not be restricted solely on account of duty status. Nothing herein shall be construed as restricting the employers ability to consider the basis of the duty status.

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Section E. Visitation

1. Short messages by Four-Phase such as announcements of meetings sent by the FOP shall be read at roll calls.

2. Officials of the FOP may be granted reasonable time to address roll calls (in person or by VCR/DVD) under the following conditions:
 - a. Only after the usual roll call business is concluded;
 - b. Reasonable advance notice is given to the shift sergeant prior to roll call starting time; and,
 - c. Time allowed shall not exceed the regular conclusion of roll call.
 - d. Permission to address roll calls shall not be unreasonably withheld.
3. Officials of the FOP shall be given reasonable advance notice of all new employee orientation sessions in which new bargaining unit members are participating or academy class orientation sessions. The FOP will be provided at least five minutes at the beginning and 30 minutes at the end of an academy class orientation session to address employees about their contract, benefits, and FOP representation.
4. Officials of the FOP shall continue to have reasonable access to all work sites so long as such visits will not interfere with the conduct of normal County business. It is understood, and Lodge 35 acknowledges, that this paragraph establishes no new right and merely preserves the past practice in regard to access to work sites.
5. Officials of the FOP shall be given an additional 45 minutes to address each academy class subsequent to training week 12. The exact date and time shall be scheduled between the FOP and Academy staff. Flexibility shall be allowed for rotations.
6. Officers of the FOP shall be afforded up to one (1) hour of class time for each in-service session. The FOP shall provide the department with as much notice as possible in the event the FOP will be unable to attend the session.

Article 8 Contract Grievance Procedure

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Section B. [Initiation of a Grievance] Informal Resolution:

1. Except in exigent circumstances or where a grievance relating to compensation is based on a claimed computational or factual error, an employee must notify the president of the FOP that he or she has a grievance within thirty days (30) after he or she knew or should have known of the existence of the dispute or grievance.
- [2. At the option of the FOP, a grievance may be presented informally by an FOP Steward or other suitable official to the district or unit commander for resolution. If the grievance is not resolved at that stage, it may be processed as provided below.]

2. Informal Complaint Resolution:

The parties encourage that wherever possible, they will commit to the use of an informal complaint resolution process [ICR]. A member may notify a steward or other authorized Union official who may initiate this process within ten days from the date the member knew or should have known of the dispute. The process can begin with any form of notification (verbal or written) but each party should note and

acknowledge that date. In totality, the ICR will be completed within fifteen days of presentation; however, upon mutual agreement, the period can be extended to no more than thirty days.

After receiving notification from the member, the authorized union official will then contact a management representative assigned to the functional unit from which the dispute emanates, and these parties will engage in the ICR discussions. At this point the parties shall meet to engage dialogue and compromise to resolve the disagreement. Neither party shall utilize outside counsel.

The ICR will have no impact on the rights of the union to initiate the formal grievance procedure.

Any resolution that requires future relief shall be memorialized in writing by the representatives. Only in those cases that require future relief, the statements of resolution will be forwarded to the appropriate parties in order to facilitate timely implementation of the resolution. Dispute resolutions are specific to the disagreement at hand and there is no expectation that the settlement will constitute precedent. If the grievance is not resolved at this stage, it may be processed as provided below.

Section C. First Step of the Grievance Procedure. A grievance shall be presented in writing to the [chief of police] employer through its Office of Human Resources within twenty (20) calendar days after the president [of the FOP] 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 [to the unit commander as provided above, an additional ten (10) days shall be added to the time provided] under Section B of this article, equivalent additional time shall be added. The FOP shall forward a copy of the grievance to the [employee's immediate supervisor and district or unit commander] chief of police. The grievance shall be set forth with reasonable clarity. The [chief] employer, or [his] designee, and representatives of the bargaining unit shall meet and discuss the grievance within [twenty (20)] thirty (30) calendar days after it is presented to the [chief of police] employer. The purpose of the meeting is to engage in dialogue in an effort to resolve the grievance. Both parties shall designate representatives with settlement authority. The [chief of police] employer shall respond, in writing, to the grievance within [twenty (20) calendar days of the meeting] seventy-five (75) calendar days after the grievance is filed.

[*Section D. Second Step of Grievance Procedure.* The FOP may appeal the decision of the chief of police by presenting a written appeal to the chief administrative officer for Montgomery County (hereinafter *CAO*) within fourteen (14) calendar days of the chief of police's decision. The CAO, or his/her designee, and representatives of the bargaining unit shall meet to discuss the grievance within twenty (20) calendar days after presentation of the appeal to the CAO. The CAO shall respond, in writing, to the grievance within twenty (20) calendar days of the meeting.]

Section D. Alternative Dispute Resolution. The parties may mutually agree to refer the Grievance to either (1) mediation or (2) advisory arbitration. Neither party shall utilize either the Office of the County Attorney or outside counsel.

1. Mediation: Upon mutual agreement, either party shall request the services of a Federal Mediation and Conciliation Service mediator unless the parties mutually agree to utilize another mediator.
2. Advisory Arbitration: If the Union and the Employer voluntarily agree to advisory arbitration, the mediator/arbitrator names shall be selected from the jointly agreed upon grievance arbitrators. At advisory arbitration each party's presentation will be limited to a brief oral argument and supporting documentation. Presentations shall be limited to thirty (30) minutes. At the conclusion of the parties' presentations the arbitrator will recommend a resolution to the grievance. Cost of advisory arbitration is split. The advisory arbitration recommendation shall be confidential and shall not be referenced in any other forum. The party rejecting the arbitrator's recommendation will pay for the cost of grievance arbitration if that party does not prevail at the grievance arbitration. However, the cost of arbitration shall be borne equally by the parties if the parties jointly reject the recommendation received under this section or the party rejecting the arbitrator's recommendation prevails at the grievance arbitration. In the event of a dispute, the determination as to whether a party prevails at the grievance arbitration shall be determined by the grievance arbitrator after the issuance of the grievance arbitration award.

Section E. Arbitration.

1. Upon receipt of the response from the [CAO] employer, or upon expiration of the [twenty day period referred to in subparagraph D above] seventy-five day period, [either party] the FOP may refer the grievance to arbitration by providing written notice to the [other party] employer within sixty (60) days after receipt of the response [of the CAO by the FOP], or within sixty (60) days after expiration of the [twenty-day period referred to above] seventy-five (75) day period. The notice shall indicate the intention to use counsel, and must include any intention to use one of the alternate dispute resolution processes described in Section D.
2. The arbitrator shall be chosen from a panel composed of persons agreed to by the parties. The arbitrators shall be selected to hear succeeding grievances in rotation in the order their names appear. If the arbitrator slated to hear a grievance cannot hold the hearing within a reasonable time, the next arbitrator shall be selected. [Upon mutual agreement, the parties may meet in a pre-hearing conference on a case-by-case basis.]

Section F. Arbitration Procedures. [Unless the arbitrator believes and determines that the filing of briefs is necessary to a fair and timely consideration of the grievance, neither party shall have the right to file a brief. Either party may request the arbitrator to determine whether the above standard has been met and to authorize the filing of briefs. The arbitrator must submit a written opinion regarding the grievance within sixty (60) days after the hearing. The requirements that the arbitrator's opinion be in writing may be waived only upon written consent of both parties. The costs of arbitration shall be borne equally by the parties.]

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.
- b. At the time an arbitrator is notified of his or her selection for an arbitration, the parties shall provide the arbitrator with a copy of the Agreement as furnished by the FOP, the Police Labor Relations law, the grievance and the response to the grievance.
- c. The parties shall meet no later than seven (7) calendar days before the date of the scheduled arbitration. At the meeting the parties shall identify the issue(s) succinctly, develop stipulations, and make a good faith effort to identify joint exhibits.
- d. The parties shall exchange information and exhibits prior to the arbitration. Unless otherwise agreed to by the parties, each party must deliver the information and exhibits to the opposing party no later than 5:00 p.m., three (3) business days before the arbitration. Any exhibit not previously exchanged between the parties shall not be accepted into evidence unless the arbitrator determines there is good cause to accept the exhibit.

2. Arbitration.

- a. Arbitrators are encouraged to set aside the first hour(s) of the scheduled hearing to encourage and assist the parties to resolve the grievance.
- b. Unless the arbitrator believes and determines that a stenographer is necessary for a fair consideration of the grievance, stenographers shall not be used at the hearing. Either party may have an audio recording device present. Copies of any recordings must be provided to each party and the arbitrator if requested.
- c. Objections are strongly discouraged and should be made only if failure to object will result in prejudice to a party.
- d. Each party shall have its witnesses available and ready to testify. The parties and the arbitrator are strongly encouraged to exclude redundant testimony. Upon the request of either party, the arbitrator may take notice of undisputed facts without the need to call a witness to testify to such facts.
- e. Each party may make an opening statement not to exceed 20 minutes in length.
- f. Unless the arbitrator believes and determines that the filing of briefs is necessary to a fair and timely consideration of the grievance, neither party shall have the right to file a brief. Briefs are strongly discouraged and should only be allowed by the arbitrator when the above standard has been met. Briefs may not exceed 35 pages in length. The font size shall not be smaller than 13 point.
- g. If briefs are filed, the parties may not make closing arguments. If briefs are not filed, each party may make a closing argument not to exceed forty-five (45) minutes, unless the arbitrator believes and determines that additional time is needed for a fair consideration of the grievance. Each party may reserve a portion of the time allowed for rebuttal, but in the initial argument shall present the case fairly and completely and shall not reserve points of substance for presentation during rebuttal.

Unless a case is complicated, the parties may jointly agree to notify the arbitrator at the beginning of the arbitration that a bench decision may be issued in lieu of a written decision. In the alternative, the parties may jointly agree that the arbitrator may issue a written decision not to exceed one (1) paragraph within two (2) business days of the arbitration. Otherwise, the arbitrator must submit a written opinion regarding the grievance within sixty (60) days after the hearing. Any arbitrator who issues a bench decision or a one (1) paragraph written decision within two (2) days of the arbitration shall be compensated for one (1) additional day. The costs of arbitration shall be borne equally by the parties.

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Article 18 Annual Leave

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Section N. Leave Sharing. For the term of the agreement, the FOP will administer an annual leave transfer program to allow unit members to donate annual leave to any unit member in need who has exhausted all accrued annual, leave.

Article 19 Sick Leave and Sick Leave Donor Procedure

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Section L. Sick Leave Donations. Employees in the Unit as well as officers above the rank of sergeant and other non-bargaining unit employees in the Police Department may donate sick leave for the purpose of providing authorized sick leave to any Unit member who has exhausted all accrued annual, compensatory and sick leave. Sick leave means leave earned under Section A. of this Article. The procedures governing donation of sick leave followed in implementing the Sick Leave Donor Program established by the predecessor Agreement between the parties shall remain in effect, except as provided in Section P of this Article. Where the FOP has an established leave donation agreement with another bargaining unit within Montgomery County, the employer agrees to honor the agreement pursuant to the applicable contractual requirements of the bargaining unit and transfer sick leave as requested.

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Article 25 Transfers

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Section F. Filling of Vacancies.

1. Department directive 325, dated July 1, 1997, as agreed by the parties, shall remain in effect to the extent it deals with negotiable terms and conditions of employment. [See Side Letter.]
2. All members of the selection committee must review and sign the recommendation.

3. Subsequent to the selection, any unit member applicant shall have the right to review the recommendation committee memo upon request.

The County will provide information consistent with the Kent Smith arbitration award.

Article 26 Non-Discrimination

Section A. All terms and conditions of employment contained in this Agreement shall be applied to all employees without [discrimination] regard to union or political affiliation, race, color, religious creed, ancestry, national origin, sex, marital status, [religion, union or political affiliation, country of origin] age, disability, family responsibilities, sexual orientation, or [disability] genetic status and strictly in accord with their individual merits as human beings.

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Article 29 Physical Fitness Awards

Section G. 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.

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Article 31 Reopener

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Section F. Reopener for 2nd year of the contract (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 PLRA will be implemented. The parties agree to select Arbitrator Richard Bloch, if available, to serve as the impasse neutral.

Article 32 Health and Safety

Section A. Generally.

1. The employer shall take all reasonable steps to preserve and maintain the health and safety of its employees. The parties recognize the importance of preserving and maintaining the safety of employees and to that end agree to establish a joint health and safety subcommittee per Article 33 to be composed of three (3) members appointed by the bargaining unit and three (3) members appointed by the County. In addition, each party may appoint one alternate member to the subcommittee. The subcommittee will meet at the request of any three (3)

members upon notice. The chairman shall serve for six (6) months and shall be selected alternately from among the three (3) members selected by the County and three (3) members selected by the FOP. The subcommittee shall:

- a. Study, review, and evaluate any working conditions which affect the health and/or safety of employees;
 - b. Study, review, and evaluate any equipment used or contemplated for use by the Department of Police;
 - c. Study, review, and evaluate existing or anticipated procedures affecting the health and/or safety of employees.
2. Either party may refer any matter to the joint subcommittee through the LMRC or its LMRC designee for consideration and, after due consideration, the subcommittee or any three (3) members thereof shall make such recommendations as it or they deem appropriate to the chief of police and lodge president. The chief of police shall then consider the recommendation and respond within a reasonable time.
 3. Any health and safety modifications entered into by the employer and the FOP may be incorporated into this agreement by the parties without further ratification.
- [3] 4. Those employees attending subcommittee meetings while off-duty may be granted hour- for-hour compensatory time during the administrative pay period in which the meeting occurs, for time spent at the meeting.

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Section D. Flu and Hepatitis Shots. The Employer shall provide hepatitis and flu [shots] vaccinations to unit members desiring same. In the event an employee requests a flu shot and none is available, subject to receipt, the employer shall reimburse the employee's co-pay associated with such shot.

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Section J. Employee Notification. When Occupational Medical Services (OMS) and the Department communicate orally about an employee's medical situation, or duty status or restrictions, OMS shall document the communication on a log maintained in the employee's medical file. Each entry to the log shall include the date, time, persons involved in the communication, and summary of the communication. Upon request, a copy of such log shall be provided to the subject employee. When OMS and the Department communicate in writing about an employee's medical situation, duty status, or restrictions, and the communication is not maintained in the employee's medical file pursuant to Article 51 section C.2, OMS shall provide the employee with a copy of the communication in a sealed envelope marked confidential.

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Article 33 Labor - Management Relations Committee

Section A. Purpose. The purpose of the Labor-Management Relations Committee ["LMRC"] is to engage in good faith discussion to:

1. Resolve issues/problems between the parties;
2. Avoid conflicts;
3. Build trust between the parties;
4. Improve the relationship between the parties; and
5. Improve oversight and guidance of Health and Safety Subcommittee.

Section [A] B. Committee Created. The parties agree to continue the [a Labor – Management Relations Committee [“LMRC”]] LMRC which shall consist of [four] five Lodge 35 representatives appointed by the president and [four] five management representatives appointed by the employer. Upon mutual agreement of the parties, a party may bring additional representatives. The parties’ representatives will have the authority to effect the purpose of the LMRC.

Section C. Subcommittee created-

1. The parties agree to incorporate the intent expressed in Article 32 into this article. The Health and Safety Committee will continue to operate, however, it will function as a subcommittee, under the direction and guidance of the LMRC. One LMRC representative designated by the president, and one representative designated by the employer will serve simultaneously as members of the Health and Safety sub-committee and will alternate responsibilities as Chair of the Health and Safety sub-committee in a manner that is consistent with past practice.
2. The parties agree to establish a joint technology subcommittee to be composed of three (3) members appointed by the FOP and three (3) members appointed by the County. In addition, each party may appoint one alternate member to the subcommittee. The subcommittee will meet at the request of any three (3) members upon notice. The chairperson shall serve for six (6) months and shall be selected alternately from among the three (3) members selected by the County and three (3) members selected by the FOP. One LMRC representative designated by the president, and one representative designated by the employer will serve simultaneously as members of the technology subcommittee. The technology subcommittee will function under the direction and guidance of the LMRC. The subcommittee shall study, review, and evaluate: electronic timesheets, electronic performance evaluations, technology to aid in court notification and callback, and other technology issues including but not limited to system capability and security. Any recommendations shall be forwarded to the LMRC. In the event the LMRC does not adopt recommendations, the process under Article 61 may be utilized. Nothing in this subsection shall be construed to impair any rights or obligations of either party enumerated in the PLRA.

Section [B] D. Meetings. [The committee shall make best efforts to meet at least quarterly at mutually agreed upon locations. Each side shall appoint a liaison who shall be responsible for coordinating and scheduling meetings.] The parties agree to meet at least quarterly (additional meetings by mutual agreement) on the 3rd Wednesday in January, March, June and September, each year of this agreement (months occurring during term bargaining excepted) from 10:00 a.m.

until noon. If a meeting is canceled, a make-up meeting shall take place within thirty (30) days of the canceled date. Meetings will take place at a mutually agreeable location. The parties agree to attend and to remain for the duration of the meeting (a designee with authority from each side at a minimum).

The parties agree to exchange agenda items in writing 13 days prior to the next scheduled LMRC meeting (by 5:00 pm on Thursday). Agenda items will be described with reasonable clarity so that the parties may prepare to discuss each issue. Joint minutes will be prepared by the parties and distributed to the LMRC members within thirteen (13) days after the meeting.

Section [C] E. Scope of Committee. The committee may discuss matters of interest to either party and make recommendations to the union and the employer. However, the committee shall have no authority to alter a collective bargaining agreement, to engage in collective bargaining, or to adjust or resolve grievances.

Section [D] F. Compensation. Employees attending LMRC meetings while off-duty will receive hour for hour compensatory leave during the administrative pay period in which the meeting occurs, for time spent at the meeting. Employees attending while on duty will be released from other duties in order that they may attend.

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Article 35 Vehicles

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

1. [For the duration of this Agreement, the County will use its best efforts to] 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. Such vehicles must be appropriate (marked or unmarked) for the officer's duty assignment.
2. The County will use its best efforts [during the term of this agreement] prior to full implementation of the single officer fleet vehicle program, to allocate cars among the districts so as to make it possible for the most senior officers to be assigned single officer fleet vehicles and to make vehicles available to eligible officers (subject to Council imposed budget limitations and service needs). If any officers within the same unit are required to share a vehicle, they shall be selected pursuant to the seniority provisions of the agreement, in inverse order. The sharing of vehicles may be on account of any bona fide reason (including insufficient unassigned vehicles in the Department's fleet to provide a PPV to all eligible officers). [The Department desires to be able to make assignments based upon operational necessity. Example-if the junior-most officers work the same shift, then the sharing of vehicles is not a viable option. Therefore, a junior officer other than the second most junior officer would need to be designated as having to share a vehicle with the most junior officer.]

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Article 36 Wages

Section A. Wages. [Effective September 5, 2004, each unit member shall receive a wage increase of 2.0 percent. Effective July 10, 2005, each unit member shall receive a wage increase of 2.75 percent. Effective July 9, 2006, each unit member shall receive a wage increase of 3.0 percent. Effective January 7, 2007, each unit member shall receive a wage increase of 1.0 percent.] 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 PO I.

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.

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Section G. Overpayments

1. When the employer alleges that an employee has been overpaid and seeks reimbursement, it shall give the employee and FOP 35 written notice of the overpayment. The notice shall specify the amount and dates of each alleged overpayment, the reasons for the overpayment, and the provisions of this section. The parties will jointly develop a notification form.
2. If the employee fails to respond to the notification within thirty (30) days of receipt, the employer may seek repayment pursuant to paragraph 4 of this section
3. If the employee agrees that s/he was overpaid and with the amount and dates alleged by the employer, the parties will discuss the overpayment and attempt to agree on a repayment plan. If they fail to agree on a repayment plan within thirty (30) days after the start of the resolution discussions, the employer may refer the dispute to a neutral for resolution pursuant to paragraph 5 of this section.
4. If the employee or FOP 35 responds to a notice of overpayment and disagrees with the employer's allegations regarding the overpayment, the parties shall attempt to resolve the dispute. If the dispute is not resolved within thirty (30) days after the start of the resolution discussions, the employer may refer the dispute to a neutral for resolution pursuant to paragraph 5 of this section.
5. On a semi-annual basis, the parties will mutually agree upon a neutral party to resolve overpayment disputes. The employer shall have the burden of establishing that there was

an overpayment, the dates and amount of overpayment, and the amount to be repaid. The cost of the neutral shall be borne equally by the parties. The neutral will have no authority to amend, add to, or subtract from the provisions of this Agreement. The neutral shall decide the dispute as he or she shall determine is proper under this Agreement.

6. The repayments shall be adjusted to restore the employee to a condition commensurate to where they would have been save for the overpayment. Unless the employee agrees, no repayment in any pay period shall exceed the lesser of (a) 10% of the employee's net base pay in that pay period, or (b) the total amount to be repaid divided by the number of pay periods in which the overpayment occurred. The employee will not pay the employer interest on any overpayment.
7. The employer cannot recover any overpayment that occurred 2 or more years prior to the employee receiving notice to paragraph 1 of this section.
8. This section does not apply to any overpayments made before July 1st, 2007.

Article 37 Special Medical Examinations

Section A. Unit members who are scheduled for special medical/psychological examinations will be advised in writing of the reasons for the examination and the use that will be made of the results.

Section B. It is expressly understood that a unit member scheduled for a special medical/psychological [exam] /psychiatric or substance abuse examination will not be requested or required to sign or provide any waiver of any right or privilege or denied access to the complete medical files produced by any physician, psychologist or health professional as a result of the special medical[/], psychological/ psychiatric or substance abuse exam except as required by law or this article. No psychological, psychiatric, or substance abuse information will be provided under section C1 of this article.

Section C. Medical Exams.

1. Subject to Section C.2 of this article, an employee who is subject to a Special Medical Examination to determine fitness for duty will, upon request of Occupational Medical Services or a health care provider conducting the exam, authorize the disclosure of medical information specifically and directly related to the current medical diagnosis, prognosis and any duty restrictions related to the diagnosis. Such disclosure will be made solely to Occupational Medical Services or to a health care provider conducting a special medical examination.

2. An employee may decline to authorize the disclosure of medical information specified in section C.1. when the employee reasonably believes that the special medical exam may lead to disclosure of information about psychological/psychiatric issues or substance abuse. In such case, the employee must request directly from OMS, an examination by a panel member in accordance with Section D. The employee must

provide the medical information specified in section C.1. to the panel member. If, as a result of the examination, the panel member determines that a special medical examination may be conducted without disclosure of psychological/psychiatric or substance abuse information, the employee must authorize the disclosure of medical information specified in Section C.1. to OMS or to the health care provider conducting a special medial examination.

D. Psychological/Psychiatric & Substance Abuse Exams.

1. The parties will mutually agree upon a panel of mental health care providers to perform psychological/psychiatric examinations and a separate panel to perform substance abuse examinations. All psychological/psychiatric & substance abuse exams will be conducted solely by panel members.

2. If the employer requires an employee to undergo a psychological/psychiatric or substance abuse examination, the employee may select which panel member will conduct the exam. The employee will notify the Employer of his or her selection within ten (10) working days after receiving a written list of panel members from the Employer.

3. Prior to the psychological/psychiatric or substance abuse exam, the Employer will provide the panel member conducting the exam with:

(a) a copy of the notification given to the employee pursuant to section A of this Article, and

(b) a copy of the provisions of paragraphs 4, 5, 6, 7 and 8 of this section.

4. If the Employer requires an employee to undergo a psychological/psychiatric or substance abuse examination, the employee may be required to provide the panel member conducting the exam with psychological/psychiatric or substance abuse records limited to the matter specified in section A of this article.

5. The panel member conducting the examination and the employee will have the same relationship as if the employee sought health care services directly from the panel member (e.g. psychologist-patient relationship).

6. The panel member conducting the examination will be bound by privilege

7. All records relating to the examination are the employee's personal medical, psychological, psychiatric or substance abuse records. The panel member conducting the examination will maintain the employee's records in accordance with federal and state law governing these records and in accordance with this Agreement.

8. Following an examination, the panel member will forward a report, simultaneously, to the Employer and the employee or employee's representative, which will be limited to the employee's duty restrictions, if any, and their anticipated duration.

Article 39 Tuition Assistance

* * *

Section B. Amount and Qualification. The level of tuition assistance for bargaining unit employees will be as follows: [\$1,230 effective July 1, 2004, \$1,330 effective July 1, 2005, and \$1,430 effective July 1, 2006.] \$1,530 effective July 1, 2007, \$1,630 effective July 1, 2008, and \$1,730 effective July 1, 2009.

* * *

Article 41 Shift Differential

Section A. Amount. Officers [shall] receive [one dollar and twenty cents (\$1.20)] one dollar and twenty-four cents (\$1.24) for each hour worked on a work shift that begins on or after 12:00 noon and prior to 7:59 p.m., and [one dollar and fifty cents (\$1.60)] one dollar and sixty-five (\$1.65) for each hour worked on a shift that begins on or after 8:00 p.m. and before 5:59 a.m. The hourly pay differential shall increase to one dollar and twenty-eight cents (\$1.28) and one dollar and seventy cents (\$1.70) respectively, effective the first full pay period following July 1, 2008. The hourly pay differential shall increase to one dollar and thirty-three cents (\$1.33) and one dollar and seventy-five cents (\$1.75) respectively, effective the first full pay period following July 1, 2009.

* * *

Article 43 Discipline

Section A. Law Enforcement Officers' Bill of Rights.

1. Any "law enforcement officer" as defined in Section [727] 3-101 of the Law Enforcement Officer's Bill of Rights ("LEOBR", [Article 27, Section 727, *et seq*] Public Safety Article, Section 3-101 *et seq.*, Annotated Code of Maryland) who is the subject of a sustained complaint involving proposed punishment which is not summary punishment as defined by the LEOBR [§734A] §3-111, may elect the alternate method of forming a hearing board. Said alternate method is not available with regard to a hearing convened pursuant to LEOBR [§734A(2)(iii)] §3-111.
2. The officer shall make such election in writing using the Notice of Election of Hearing Board form (attached and made a part of this agreement as Appendix K). In making such election, the officer shall waive his/her right to the formation of a hearing board pursuant to LEOBR [§727(d)(1)] §3-107(c)(1) & (2). Such Notice of Election of Hearing Board form must be: completed by the officer, approved by the FOP Lodge 35; and delivered to the chief of police or designee within seven (7) calendar days after the date upon which the officer receives the notice of a sustained complaint together with the form.
3. The alternate method of forming a hearing board shall be as follows:
 - a. The board shall consist of 3 members: two (2) law enforcement officers and a neutral chairperson. The chairperson shall be chosen from a standing panel of arbitrators maintained for such purpose by the County and FOP Lodge 35. The chairperson shall be

selected to hear cases in rotation in the order their names appear. If the arbitrator slated to hear a case cannot hold the hearing within a reasonable time, the next arbitrator shall be selected.

- b. The chief shall appoint one (1) law enforcement member, and the FOP Lodge 35 the other. These appointments shall be announced simultaneously, without undue delay. The law enforcement member appointed by FOP Lodge 35 shall be scheduled to day work for the duration of the hearing board.
 - c. No member of the hearing board shall in any way be involved in, or a witness to, any incidents which are the subject to the complaint before them.
 - d. Except as provided in subparagraph (e), FOP Lodge 35's choice of a law enforcement member shall be any member in the bargaining unit; and The chief's choice may be any law enforcement officer in the rank of sergeant or above. Therefore, it is not required that either law enforcement member be of the same rank as the accused officer.
 - e. If the chief of police decides to select a law enforcement member from another law enforcement organization, the FOP Lodge 35 shall receive sufficient notice in time to select a law enforcement member from another law enforcement organization, if it so desires. FOP Lodge 35's choice of a law enforcement member shall be of a rank comparable to the ranks within the collective bargaining unit.
4. The fee and expenses of the neutral chairperson of the board shall be borne equally by the Department of Police and FOP Lodge 35.
 5. The written decision of a hearing board formed under this section shall be final pursuant to LEOBR §3-108(c)(1)(ii), [processed pursuant to Article 27, §731(c) of the Annotated Code of Maryland] in effect as of [1/26/96] 1/30/2007.
 6. Any controversy concerning this Section, excluding paragraph 5, *supra*, may be submitted to the chairperson of the hearing board for his/her hearing and/or decision. Such decision of the chairperson shall be contested pursuant to LEOBR [Sections 732 or 734] Sections 3-105 or 3-109, as applicable.

* * *

Section F. Employee Right to Representation. Except where an interrogation or investigation is covered by the LEOBR or Section D of this Article, in the event an employee reasonably believes that an interview, interrogation or examination may result in the imposition of discipline, the employee has the right, at his/her request, to be represented by a union steward, counsel or any other responsible representative of his/her choice who may be present during the interview, interrogation or examination. If the employee asserts the right to representation, he/she shall be afforded at least 2 hours to arrange for representation

* * *

Article 47 Duration of Contract

This agreement shall become effective on July 1, [2004] 2007, and terminate on June 30, [2007] 2010.

* * *

Article 51 Personnel Files

* * *

Section B. Custody and Review

1. The Personnel Office shall maintain the official personnel file for each County employee.
2. The Occupational Medical Section, [Department of Finance] shall maintain the official medical records file for each County employee.
- [3.] 3. An employee's medical records file becomes a part of the employee's official personnel file when the Personnel Office has received an application for workers' compensation, disability retirement, normal retirement, long-term disability claim or upon termination of employment.]
- [4.] 3. The Department may maintain an operating file on each employee within the department. The Department may also maintain a second operating file on an employee that shall be kept within the employee's unit. The custodian of these files will be informed by the Department as to the appropriate contents of such files as provided in §C of this Article, except that the contents shall not contain disciplinary actions, including written reprimands, or at-fault accident reports.
- [5.] 4. Supervisors may maintain a file on each employee under their direct supervision.
- [6.] 5. Employees are encouraged to review their personnel records at least once each year.
- [7.] 6. No information shall be placed in any employee personnel file unless the employee receives a copy of the information (subject to limitations concerning medical files as referenced in §B.[10] 9) and is provided an opportunity to submit a rebuttal, if desired, to be included in the file.
- [8.] 7. To preserve confidentiality and protect the privacy of employees, access to an employee's personnel records shall be restricted to the following:
 - a. Employee who is the subject of the file or authorized representative.
 - b. Employee's supervisor. (Need to know basis)
 - c. Appointing authority or designee. (Need to know basis)
 - d. Human Resources_Director or designee. (Need to know basis)
 - [e.] f. Member of Merit System Protection Board or designee. (Need to know basis)]
 - [f.] e. County attorney or designee. (Need to know basis; i.e., when an employee is in litigation against the County, e.g., Merit System Protection Board, Worker's Compensation, Disability, Retirement, etc.)
 - [g.] f. Chief Administrative Officer or Assistant Chief Administrative Officer. (Need to know basis)
- [9.] 8. Except for verification of employment and current salary information, the release of information from an employee's personnel records to anyone other

than those listed in §B.[8] 7 requires a signed authorization from the employee who is the subject of the personnel record accompanied by a statement giving the reason for the review and a description of the material requested.

- [10] 9. Notwithstanding §B.7, the release of information from an employee's medical file to anyone other than the employee, the county attorney's office, human resources director, or [Senior Management designee] Chief Administrative Officer or Assistant Chief Administrative Officer requires a signed authorization form from the employee who is the subject of the medical record accompanied by a statement giving the reason for the review and a description of the material requested. Further, the custodian of medical records may determine, consistent with state law, that certain information pertaining to psychological/psychiatric medical reports will only be released to an employee through the employee's physician.
- [11] 10. Except as provided at Section B.[8] 7 of this article, or as required by law, personal information of unit members maintained by virtue of the employment relationship, such as home address, telephone number, family information, marital status, and photographs will not be released without prior written authorization of the unit member. The parties agree to develop a form to be distributed to all unit members requesting that they provide their age, area of residence, spouse's name, educational background, awards or recognition received, organizations belonged to, date of employment, and previously held positions. The form shall state that the department "respect[s] your right to privacy and if certain questions appear to be too personal, you may omit them." Further, the form shall provide the unit member with the option to provide his/her own photograph to be used instead of any other photograph maintained by the county, to authorize use of county photographs, or to provide that the county shall not release any photograph unless required by law.
- [12] 11. Restricted Duty Unit files shall be maintained in the Police Personnel Division. Restricted Duty Unit files shall be destroyed after twelve months have elapsed since the employee returned to full duty, except RDU tracking forms shall be transferred to the department unit/operating file and the official personnel file.

Section C. Contents

* * *

2. The contents of an employee medical file shall be limited to:
 - a. County medical examination records.
 - b. Records obtained or received from any physician in reference to an employee's or applicant's medical fitness.
 - c. Any medical waiver or release signed by the employee.
 - d. Requests to the Occupational Medical Section, [Department of Finance,] by

an employee's supervisor and/or appointing authority for any additional or special medical examinations, the record of the actions taken by the Occupational Medical Section and the results of the additional or special medical examination.

* * *

4. The contents of the Restricted Duty Unit files shall be limited to:
 - a. First Report of Injury Forms.
 - b. Medical and Health Status Reports and memos from the Occupational Medical Section.
 - c. RDU tracking forms.
 - d. Medical evaluations from physicians as they pertain to the employee's ability to work/return to work, and his/her ability to perform the essential functions of the position, in addition to limitations and prognosis.
 - e. Memos from supervisors regarding the medical condition and the transmittal of documents.
 - f. Memos scheduling special medical examinations.
 - g. Disability leave payroll memorandums.
 - h. Supervisor's Incident Investigation Report (SIIR) forms.
 - i. Other Worker's Compensation/ [Trigon] Third Party Administrator/Risk Management forms.
5. Notwithstanding §C.4, documents containing medical information shall not be included in the Restricted Duty Unit file where inclusion of such documents is prohibited by federal law.

Section D. Supervisory Files

* * *

5. The LMRC shall study, review, and evaluate changes to electronic supervisory files.

* * *

Article 55 Job Sharing Program

Section A. Purpose and Administration. The purpose of this program is to allow certain bargaining unit employees the opportunity voluntarily to share a job while working in a part-time/half-time appointment to enable them to care for immediate family dependents. The administration of this program shall not be done in an arbitrary, capricious or discriminatory manner. In order to make the program possible, the county has advised Lodge 35 that the county intends unilaterally to create an even number of job sharing, half-time positions in the police department. The county [has advised] intends to create at least [six] nine such positions as needed to accommodate at least [twelve] eighteen unit members at or below the rank of MPO, and four unit members of the rank of sergeant, who volunteer. It is recognized that the county is not obliged to create, staff or maintain half-time/part-time positions.

Section B. Eligibility.

1. Any two bargaining unit officers of comparable rank may apply for this program by requesting a part-time/half-time position, whereby each officer works twenty (20) hours per week. Work assignments shall be determined by the employer.
2. Eligibility is limited to bargaining unit employees who are or have held the rank of **Sergeant**, Master Police Officer or Police Officer III.

* * *

Section E. Benefits

1. *Retirement Benefits.* While in the program, the Job Sharing employee will earn retirement service credits and contribute to the retirement system as provided by the *Employees' Retirement System*.
2. *Long Term Disability Benefits* and premiums shall be governed by the group policy applicable to bargaining unit employees.
3. *Life Insurance Benefit* for Job Sharing employees shall be paid on the appropriate *pro rata* basis.
4. *Tax Deferred Compensation.* The maximum salary amount a Job Sharing employee can defer is [25% of the reduced salary] established by law and IRS Regulation.

* * *

7. If a job sharer becomes disabled in the line of duty, his/her disability retirement pension amount shall be affected in one of the following ways, at the County's option:
 - a. In accordance with existing practice, prior to the effective date of the officer's retirement, the disabled employee will be restored to duty on a full-time basis so as to enable her/him to qualify for the same benefit she/he would have received had she/he been in full-time service when disabled, subject to the limitations set out below.
 - b. The County Retirement System (Group F) [shall be] has been amended to provide that a Job Sharer's disability retirement benefit shall be based upon the full-time salary she/he would have been earning had she/he not been in the program.

* * *

8. *Rights and Benefits*

- a. The following rights and benefits shall be pro rated: Parental Leave, Disability Leave, Seniority for purposes of Article 12 of this Agreement, and Sick Leave Donor postings at Article 19 §M of this Agreement.
- b. The following rights and benefits shall not be pro rated:

Tuition Assistance, Clothing Allowance (for the first year only for those unit members who transfer from a position that was not entitled to a clothing allowance; clothing allowance will be pro rated after the first year), Uniforms and Equipment, Grievance Rights, Shift Differential, Standby Pay, Physical Fitness Awards, Call-Back Pay, FTO Pay, General Emergency Pay, Work Schedule Notice, Service Increment Delay Resulting From Work Absences (Article 28 §G), Bereavement Leave, Administrative Leave, Annual and Compensatory Time Carryover, Laundry, Shoe Repair, Alterations, and Business Cards.

- c. Any right or benefit not listed in this section and disputed may be grieved and arbitrated pursuant to Article 8 of this Agreement.

* * *

Section H. Unilateral Reopener. It is recognized that the County intends to create, staff and maintain sufficient half time positions to make it possible for at least [twelve] eighteen officers and four sergeants to participate in the job sharing program created by this Article. If the County does not implement and maintain that intent, then it is agreed that the county shall give the union and all participants at least six (6) months notice and shall promptly resume bargaining over the provisions of a replacement article to implement the parties' commitment to a job sharing program. Failing prompt agreement, either party may declare impasse and the dispute shall be submitted to a neutral (Nicholas Zumas, if available) for the last best total package offer binding arbitration.

* * *

Article 61 Directives and Administrative Procedures

[Section A. Changes to directives, rules and procedures referenced in agreement. This agreement has been negotiated in the manner set forth in the Preamble. Negotiable matters pertaining to administrative procedures, department directives, and rules referenced in this agreement (including those that are part of any appendices) are subject to addition, change, amendment or modification, only after specific notice is provided to the other party with an opportunity to bargain and after the parties reach agreement. If no agreement is reached, the addition, change, amendment or modification shall not be implemented.]

[Section B. Changes to directives, rules and procedures not enumerated in agreement. Negotiable changes to directives, rules and procedures not enumerated in this agreement, or the effects on employees of the exercise of a management right as enumerated in Article 42 § A, will be proposed by either party for bargaining. Thereafter, and before implementation of any negotiable portion, bargaining and agreement shall occur. Failing agreement, the dispute will be

resolved pursuant to the impasse procedures (excluding dates) of Chapter 33 § 33-81(b) of the Montgomery County Code. ²]

[*Section C. Procedures for Review of Directives.* Draft copies of proposed changes to directives, rules, and procedures, that contain subjects that are appropriate for bargaining, shall be forwarded to the Union along with a copy of the current directive, rule or procedure (if applicable). All changes shall be identified in the draft document. The Union shall notify the Department of any comments it has regarding the draft document within fourteen calendar days from its receipt of the draft. Failure to respond shall be deemed a negative reply.]

[*Section D. Conflict.* If a provision of a regulation, departmental directive, rule or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. A copy of the preceding sentence will be placed on the first page of each departmental directive that is issued or reissued after July 1, 2003.]

[*Section E. Presumption of Validity.* It is presumed that any work rule, policy, directive, regulation, or procedure is valid unless challenged. If the validity of such a rule is challenged by the FOP, the County has the burden of establishing the validity of the rule in relation to the provisions of the Contract, the Police Labor Relations Law, and applicable State law. The County does not, however, have the burden of establishing the validity of work rules to which the FOP has expressly agreed or concurred.]

[*Section G. Directive Review Meeting.* The parties shall meet every month on a date mutually agreed, for the purpose of discussing directives that have been presented to the Union pursuant to Section C.

1. If there are no outstanding directives to be discussed, or if no directives have been presented for review at least fourteen days before the meeting date, the parties can mutually agree to cancel a meeting.
2. The Union and the Employer shall designate representatives to attend the meeting.
3. Those employees who attend the directive review meetings while off-duty may be granted hour for hour compensatory time during the administrative pay period in which the meeting occurs, for time spent at the meeting.
4. If the parties are not able to reach agreement regarding the change, then the relevant portions of §§ A and B shall apply. ³]

This agreement has been negotiated in the manner set forth in the Preamble.

Section A. Procedures for Review of Directives. Prior to forwarding proposed changes to directives, rules, and procedures to the FOP, the employer shall make a good faith effort to assign one of the categories listed below, Section B-D, to the draft. Draft copies of proposed changes to directives, rules, and procedures with the previously referenced designation shall be forwarded to the Union along with a copy of the current directive, rule or procedure (if applicable). All changes shall be identified in the draft document. Each party shall, in writing, designate one representative to send and receive all documents specifically related to the Police

² Sections B and G invalidated by circuit court (2003). See Article 68.

³ *Supra.*

Department required under this article. Each party shall, in writing, designate one representative to send and receive all documents not specifically related to the Police Department required under this article.

Section B. Changes to directives, rules and procedures which are a mandatory subject of bargaining. Negotiable matters pertaining to administrative procedures, department directives, and rules referenced in this agreement (including those that are part of any appendices) or are otherwise a mandatory subject of bargaining are subject to addition, change, amendment or modification, only after specific notice is provided to the other party with an opportunity to bargain, if both parties agree to bargain, and after the parties reach agreement. If no agreement is reached, the addition, change, amendment or modification shall not be implemented.

Section C. Changes to directives, rules and procedures involving the exercise of a management right. If the change, or a portion thereof, to the administrative procedure, department directive, or rule involves the effects on employees of the exercise of a management right as enumerated in Article 42 §A, it will be proposed by either party for bargaining. Thereafter, the parties shall engage in bargaining only over the effects of the exercise of employer rights in accordance with the Montgomery County Code.

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.

Section E. In the event the FOP receives a draft administrative procedure, department directive, or rule and disagrees with the categorization applied by the employer, the FOP shall notify the employer within ten (10) business days. If the FOP does not respond, the employer shall follow-up in writing to the FOP. If the FOP does not respond within ten (10) business days of the follow-up, such failure to respond shall indicate agreement by the FOP to the categorization, but not the substance, of the administrative procedure, department directive, or rule. In the event the parties are unable to agree on the categorization of a directive, the matter may be resolved in accordance to the provisions of the Police Labor Relations Act (PLRA).

Section F. LEOBR Hearing Board. When in an LEOBR administrative hearing board proceeding, a unit member asserts that a County work rule, policy, directive, regulation, or procedure is invalid or inapplicable because the rule conflicts with the Contract, the County agrees that its representative will inform the administrative hearing board that it is appropriate for the board to consider the validity of the rule in relation to the Contract, before the board applies the County's rule.

* * *

Article 63 Childcare

Section A. Vision; Flex-Schedules. Consistent with the vision of the County's work/life initiative, the parties shall work together to ensure a diverse and equitable workplace built on cooperation, flexibility, openness, respect and trust, where employees can achieve excellence and balance work, career, home, family and community life. In compliance with this vision, whenever practicable, flexible scheduling and job-swapping shall be [available] allowed for parents with child care responsibilities, subject to the approval of management. Approval shall not be unreasonably withheld or withheld for an arbitrary, capricious or discriminatory reason.

Section B. Leave. For the term of the agreement, the FOP will administer an annual leave transfer program to allow unit members [who are married to other unit members] who are co-parents (married or unmarried with a child in common) with other unit members to use the accrued annual leave of their [spouse] co-parent, with permission of the [spouse] co-parent, for childcare purposes (dependant children under the age of 13). Annual leave donations are permitted in increments of not less than 40 hours (an hour for hour transfer). Further, unit members [married to other unit members] who are co-parents shall be allowed to donate sick leave to their [spouse] co-parent for Parental Leave and FMLA purposes. Unit members are required to obtain approval of leave consistent with current practice. Donated annual leave cannot be transferred back to the donating [spouse] co-parent. [See Side Letter]

Section C. Childcare. The parties agree to jointly retain and fund a consultant to conduct a childcare needs assessment survey. The consultant shall report to the parties by [June 30, 2005.] June 2009. The parties also agree to establish a joint committee consisting of an equal number of bargaining unit and management members who jointly oversee the consultant's work and provide support for the assessment process. The certified representatives of other county public safety employees shall be invited to participate as members of the joint committee. The committee will make joint or separate recommendations to the parties. If accepted, the recommendations shall be implemented. If either party rejects, the matter shall be reopened for negotiations on or before November 1, [2005] 2009, with impasse to follow.

* * *

APPENDIX G MEDICAL EXAMINATION

PURPOSE: [To establish policy and procedure for medical examinations for employees of the Department in accordance with Administrative Procedure 4-13 dated 1/15/79] This appendix sets forth the procedure for medical examinations for employees administered by the Employee Medical Examiner (EME). The medical examination program [which includes the "Physical Fitness Testing Program] ensures that each employee is physically able to perform [the duties and responsibilities of his position] his/her position with the least possible risk to [the health or safety to self or others] safety. As a preventive program, it is designed to

[detect early medical problems and provide management with a medical opinion when it appears an employee's medical condition is adversely affecting job performance.] assess current health status and functional capabilities and provide the employer with a written recommendation on whether the employee is fit for duty.

CONTENTS:

- I. [Medical Groups] Medical Standards and Guidelines for Medical Examinations
- II. Medical Exam Protocols
- [II.] III Periodic Medical Exams
- [III] IV. Notification of Employees
- [IV] V. Rescheduling
- [V] VI. Missed Appointments
- [VI] VII. Medical Examination Scheduled During Off-Duty Hours
- [VII] VIII. Cancellation

[I. Medical Groups

- A. All positions covered by the Classification and Compensation Plans are assigned specific medical standards and requirements based upon the physical and mental demands of the job.
- B. Medical Groups are defined as follows:
 - Medical Group I: Positions which require an extraordinary degree of physical fitness and mental health. Public Safety employees comprise this group.
 - Medical Group II: Positions which require moderate-to-considerable physical labor or exertion, or which require the use of machinery and heavy equipment; or which have requirements for significant exposure to environmental extremes.
 - Medical Group III: Positions which are sedentary or which do not require significant or unusual physical exertion or exposure to environmental factors.]

I. Medical Standards and Guidelines for Medical Examinations

(a) Policy on medical standards and guidelines.

(1) Medical standards and guidelines for medical examinations must be:

(A) job-related and used to determine if the employee can perform the job with or without accommodation; and

(B) applied uniformly and consistently to all employees who are employed in the same job class or occupational class.

(2) When performing medical examinations or inquiries, the EME must conduct an individualized assessment of an individual's current health status and functional capabilities:

(A) in relation to the functions, physical and psychological demands, working conditions, and workplace hazards of a particular occupation or position; and

(B) under appropriate occupational health guidelines and practices.

(3) The EME may refer an employee to another health care provider for an independent medical evaluation as necessary. The employer shall reimburse the employee for any co-pay and other costs of the independent medical evaluation, including pay for the actual time spent at the appointment at the regular or overtime rate (for a minimum of two hours), whichever is applicable.

(4) The EME must not conduct medical examinations to determine if an applicant or employee has a disability or the nature or severity of the disability unless the examination or inquiry is job-related and consistent with business necessity.

(5) The EME must:

(A) maintain records of medical equipment maintenance and calibration in accordance with manufacturer's recommendations;

(B) comply with regulatory medical testing requirements;

(C) educate Occupational Medical Services (OMS) staff in proper examination and testing procedures; and

(D) use certified laboratories for applicant and employee testing.

(b) Standards and guidelines. The EME must comply with all applicable federal and state statutes and regulations and this collective bargaining agreement.

(c) Consultant's guidelines. Subject to sufficient prior notice of any changes and the opportunity to bargain if applicable, the EME may rely on guidelines recommended by professional occupational and environmental health consultants under contract with the County who assist in the development of medical standards for County occupations.

II. Medical Exam Protocols

(1) How medical exam protocols are established.

(A) The EME must establish a medical exam protocol for each County occupational class. The EME may include a medical history review, a physical evaluation, medical or physical tests, and consultations in a medical exam protocol.

(B) The EME may require additional medical evaluations not included in the assigned medical exam protocol or may apply a different medical exam protocol, as appropriate:

(i) if one or more of the duties of a particular position or the conditions under which the duties are performed present risks or hazards not present in the duties assigned to other positions in the occupational class; or

(ii) if necessary to determine the employee's ability to perform the job with or without accommodation.

(C) For vision and hearing tests that are part of a medical exam protocol, the EME must use guidelines that are relevant to job duties, working conditions, and work hazards that are based on:

(i) a validated job analysis and the consensus opinion of medical experts;

(ii) applicable Federal and State regulations; or

(iii) standards or recommendations of national or state professional medical associations.

(2) Types of medical exam protocols.

(A) Core Exam. This protocol includes a medical history review, vision and hearing tests if the employee's position requires driving. Depending on the risks associated with the employee's job, other tests may be required. A hepatitis B and flu vaccination will be offered per Article 32. This protocol also includes a physical examination by a physician, EKG, additional blood tests, and may include additional tests for the following communicable diseases: tuberculosis, titers for hepatitis B; hepatitis C, measles, mumps, rubella (MMR), and varicella (chicken pox). A rabies vaccination may be offered depending on the risks associated with the job. This protocol is for employees for positions in occupational classes that involve:

- (i) moderate or heavy physical demands;
- (ii) significant exposure to potentially aggressive or combative people;
- (iii) emergency communications; or
- (iv) frequent shift rotation.

(B) Core I Exam. The elements of the Core I Exam may include the elements of the Core Exam and an exercise treadmill test, a test to determine blood type, and a respiratory function test. A Core I Exam is required for classes that require formal medical monitoring under OSHA regulations or periodic health assessments to insure continued fitness for duty in occupations that involve high risks or occupations that require confined space entry and use of self-contained breathing apparatuses. The current procedure related to self-contained breathing apparatus shall remain in effect.

[II] III. Periodic Medical [Examinations] Exams

- A. Employees must participate in periodic health assessments conducted by the Employee Medical Examiner.
- B. Employees [in Medical Group I] requiring a Core I examination will be given periodic [physicals] examinations according to their age:
 - o Age 40 and older- not less than one (1) complete physical every year.
 - o Age 31-39- not less than one (1) [complete] physical every two (2) years.
 - o Age 30 and under- not less than one (1) complete physical every three (3) years.
- C. In those years employees are not scheduled to undergo physical examinations, annual hearing exams will be performed upon request by the employee.

[III] IV. Notification of Employees

[A medical examination schedule will be sent from the Division of Employee Medical Services to the Chief of Police for Dissemination and notification.] Occupational Medical Services will send to the Department a list of names of employees due for periodic physical examinations. The Department will schedule physical examinations with OMS and notify the employee of the scheduled appointment, at least three weeks in advance, even if the appointment will occur during the employee's published work schedule.

[IV] V. Rescheduling

An employee unable to keep a scheduled examination appointment will contact [the Division of Employee Medical Services via telephone] his/her supervisor and the supervisor will contact OMS to request a new date. Except in emergency situations, [all notifications] the employee will make best efforts to notify the supervisor of anticipated inability to keep a scheduled appointment will be made at least [72] 48 hours in advance of the appointment. If the new appointment occurs during the published work schedule, then no less than 48 hours notice will be provided. If the new appointment is rescheduled for a time outside the published work schedule, then, unless voluntarily waived by the officer, at least three weeks notice will be provided.

[V] VI. Missed Appointments

[An employee who fails to appear for a scheduled appointment will submit a memorandum to their Commanding Officer, via the chain of command, explaining the circumstances and requesting a new appointment,] Appointments missed because of inexcusable circumstances [will] may be reviewed by the Commanding Officer [who will take whatever disciplinary action is appropriate within the Police Officers' Bill of Rights] who may take appropriate action.

[VI] VII. Periodic Medical Examination Scheduled during Off-Duty Hours

An employee scheduled for a periodic medical examination and/or a Physical Fitness Testing Program appointment during off-duty hours shall:

1. Submit an Overtime Pay-Compensatory Leave Request Form (MCP #44) requesting compensatory leave at the overtime rate and indicating that a medical examination took place while in an off-duty status.
2. Compensation shall be in the form of compensatory leave, a minimum of two (2) hours at the overtime rate. In the event an employee remains longer than two (2) hours for a medical examination, [a written explanation will be obtained by the employee from the medical personnel] OMS will provide the employee with a written explanation. The explanation will be attached to the overtime request form supporting any additional Compensatory Leave requested in excess of [the] two (2) hours [limit].

[VII] Cancellation

This departmental directive cancels DD 82-34., function Code 335.]

* * *

APPENDIX V
MEMORANDUM OF AGREEMENT

Fraternal Order of Police, Lodge 35, Inc. ("FOP), and Montgomery County, Maryland ("Employer"), agree to the following amendments to their July 1, 2007 to June 30, 2010, Collective Bargaining Agreement (CBA).

A. The parties agree to the following:

1. Individual officers will record every traffic stop by entering into an electronic database all data fields listed in TA, Section 25-113. A Traffic stop is any instance in which a MCPD officer for any reason directs a person operating a motor vehicle of any type to stop and the motorist is detained for any period of time. Traffic stops based on a checkpoint, radar, laser, or roadblock are exempt from the data collection.
2. The officer's identification number shall be reported with the traffic stop data.
3. Traffic stops will be recorded using the appropriate means and transmitted by using the appropriate computer interface (currently MDC or desktop computer when MDC is not available) by those officers who have access to them.
4. All traffic stops must be documented. The employer will provide employees with the means for the recording and transmittal of the data. If an officer makes a stop and no MDC is available, the officer will enter the recorded information on the desktop computer before the end of the tour or, if off duty, when next on duty.
5. In the event the officer does not issue a written document, the officer will provide the citizen with the officer's business card and verbally inform the citizen the reason for the stop.

B. Definitions

1. A traffic stop download database is the electronic file that holds all fields of data collected at the direction of the MCPD, and entered by individuals officers. The data collected will include each officer's identification number, as well as those fields listed in Section 25-113 of the Maryland Transportation Article (TA), as amended.
2. A traffic document database is the electronic file that holds all fields of data entered from traffic citations, traffic warnings, Equipment Repair Orders, parking citations and other forms that relate to traffic violations or vehicles.

C. Data Retention

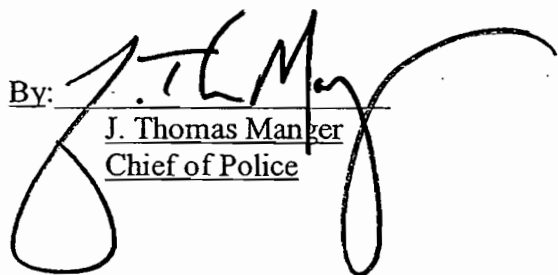
1. With respect to the traffic stop download database, the Department will maintain a "rolling" 24 months of data in the electronic file. The oldest data will be deleted from the database regularly so that no more than 24 months of data will be maintained. Officer identification number will be deleted after three (3) months. In the event no traffic citation, traffic warning, or equipment repair order is issued, officer identification number will be deleted after seventy-two (72) hours.
2. With respect to the traffic stop documentation database, the Department will maintain the data in this electronic file indefinitely. Officer identification numbers will be deleted from the database after three (3) months.
3. The employer may collect the identification numbers of employees reporting traffic stop data solely for the purpose of verifying compliance with traffic stop data reporting requirements.

FRATERNAL ORDER OF POLICE
MONTGOMERY COUNTY, LODGE 35

MONTGOMERY COUNTY
MARYLAND

By: _____
Marc Zifcak
President

By: _____
Isiah Leggett
County Executive

By: 
J. Thomas Manger
Chief of Police

Approved as to form and legality
Office of County Attorney

By: Sharon Bevel

Date: March 28, 2017

Side Letter Re: Stress Management

Effective July 1, 2007, the Stress Management Division will report to the Director of the Office of Human Resources. The County and the Union will review this change after one year.

Mobile Video Systems

Bargaining over the implementation of the mobile video systems shall commence on or before April 1, 2007 and conclude on or before April 30, 2007. If the parties fail to reach agreement by April 30, 2007, the parties shall submit the matter to final binding arbitration as set forth in the PLRA before arbitrator Richard Bloch, if available.

The parties will submit the following legislation:

33-43(i):

(7) For service-connected disabilities effective June 26, 2002 under this subsection, "final earnings" for a Group F member will not be less than the average final earnings used in determining the annual pension calculated under Section 33-42(b)(1), except in the case where average final earnings is greater than final earnings due to solely a temporary promotion.

January 8, 2007

Marc Zifcak, President
FOP Lodge 35

RE: Article 5, Multilingual Testing

Dear Marc:

This letter is to confirm our understanding regarding multilingual testing. The examination will be job related. Also, the testing for basic skills involves the ability to read English and translate to the second language, but does not include the ability to read the second language and translate to English.

Sincerely,

Carlos Vargas
Division Manager