

Resolution No.: 16-956
Introduced: May 13, 2009
Adopted: May 13, 2009

**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 amendments to their agreement for the 3-year period beginning July 1, 2007. Those amendments are 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 at worksessions on April 20 and May 8, 2009, and recommended deferral of the amendments to Article 35 (Vehicles) and approval of all other terms and conditions.
6. The County Council has considered these terms and conditions and is required by law to indicate on or before May 15 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 amendments, except the amendments to Article 35 (Vehicles), to the police bargaining unit collective bargaining agreement attached to this Resolution, from July 1, 2007, through June 30, 2010. The Council will defer a decision on the amendments to Article 35 until the Council further reviews information to be submitted by the Executive regarding the schedule and cost to implement those amendments and related tax and liability issues.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

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

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

Please use the key below when reading this regulation:

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

The parties agree to amend the contract as follows:

* * *

ARTICLE 3 – AGENCY SHOP AND DUES CHECK-OFF

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

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ARTICLE 8 – CONTRACT GRIEVANCE PROCEDURE

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

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

* * *

Section F. Arbitration Procedures.

1. Pre-Arbitration Procedures.

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

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ARTICLE 14 – HOLIDAY LEAVE AND PAY

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

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

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ARTICLE 15 – HOURS AND WORKING CONDITIONS

Section A. Hours and Overtime.

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

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6. Alternate Work Hours
 - a. Bargaining unit employees working a five-day workweek may be eligible upon approval of the County to work a “compressed workweek” pursuant to County Administrative Procedure 4-34, effective January 27, 1994 (Appendix P). As provided in this procedure, the approval of a compressed schedule is at the sole discretion of the County and is not grievable or arbitrable.
 - b. The option of a compressed work schedule for district detectives shall be at the discretion of the employee.
 - c. Upon the determination by the Employer that the operating needs of the Department will be met by assigning some or all of the Special Assignment Teams to modified compressed work hours, the workweek of some or all of the Special Assignment Teams may be changed to the modified work hours attached as Appendix Q.
 - d. Except as provided elsewhere by this Agreement, some or all other officers, including SAT, traffic, detective, administrative, and support personnel, may, by

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

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ARTICLE 19 – SICK LEAVE AND SICK LEAVE DONOR PROCEDURE

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Section P. Sick Leave Donor Procedure

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3. General Provisions.

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

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ARTICLE 25 – TRANSFERS

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

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ARTICLE 31 – REOPENER

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

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

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

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

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ARTICLE 35 – VEHICLES

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

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Section F. Program Eligibility.

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

* * *

4. All officers will be assigned marked police vehicles with the below-listed exceptions. This list may be changed upon the mutual agreement of the department and the union (side letter).
 - a. Investigative Services Bureau (except Collision Reconstruction Unit, Special Operations Division and Alcohol Initiatives Section, who are assigned marked vehicles)
 - b. Management Services Bureau (except recruiters)
 - [c Canine officers described in § F.2.]
 - c. [d.] Special Assignment Teams
 - d. [e.] Tactical Section
 - e. [f.] Office of Internal Affairs
 - f. [g.] Office of Media Services

* * *

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

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

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

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

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

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ARTICLE 36 – WAGES

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

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

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Section H.

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

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ARTICLE 43 – DISCIPLINE

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Section C. Types of Disciplinary Actions.

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

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ARTICLE 57 - RETIREMENT

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Section M. Other Retirement Changes.

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

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ARTICLE 61 – DIRECTIVES AND ADMINISTRATIVE PROCEDURES

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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.]

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ARTICLE 66 - WELLNESS STUDY COMMITTEE.

[Reserved]

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



OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

Joseph Adler
Director

March 13, 2009

Marc Zifcak
President
FOP Lodge 35

Dear President Zifcak:

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

Sincerely,

Sarah Miller
Labor Relations Manager

Summary of Proposed Concession Agreement with FOP for FY 2010

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

Summary of Concession Agreement with FOP for FY 2010

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

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

Summary of Concession Agreement with FOP for FY 2010

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