

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Expedited Bill 16-10, Personnel – Retirement – Imputed Compensation Limit

Expedited Bill 16-10, Personnel – Retirement – Imputed Compensation Limit, sponsored by Councilmember Andrews, was introduced on April 6, 2010. A public hearing was held on April 27.

Background

Although the general wage adjustments for FY10 negotiated with each of the 3 County employee unions representing police, fire, and general government workers were “postponed” last year, Expedited Bill 18-09 required that the calculation of regular earnings used to determine a retirement benefit include the FY10 general wage adjustment as if the employee had received it on July 1, 2009.¹ This imputed compensation is scheduled to carry over into the calculation of regular earnings used to calculate a defined benefit pension for the rest of an employee’s County career. Expedited Bill 16-10 would amend the retirement laws to limit the effect of the imputed compensation to the calculation of regular earnings for FY10 only.

Last year, the County’s actuary, Mercer, estimated that this imputed compensation would require the County to increase its annual contribution to the Employees’ Retirement System Trust Fund by \$8.589 million per year for the next 40 years. A copy of Mercer’s April 27, 2009 report is at ©5-7 and a memorandum reviewing it from the Council’s actuarial advisor, Thomas Lowman of Bolton Partners, Inc. dated May 6, 2009, is at ©8. The Fiscal Impact Statement, based upon a 2010 actuarial report prepared by Mercer, estimates that the actual savings from limiting this imputed compensation to FY10 is \$7.025 million for FY11. See ©18-22. Annual savings would continue for a total of 40 years.

Public Hearing

There were 5 speakers at the public hearing. Joan Fidler, President of the Montgomery County Taxpayers League (©23), Margaret Greene (©24-25), and Marvin Weinman testified in support of the Bill based upon the County’s decreasing revenue. John Sparks, President of the

¹ Employees of the Montgomery County Public Schools also agreed to “postpone” a negotiated general wage adjustment for FY10, but did not receive this imputed compensation.

Montgomery County Career Fire Fighters Association (IAFF) opposed the Bill, although he agreed that his union's intent in 2009 was to limit the imputed compensation to FY10 regular earnings.

Walter Bader, representing the Fraternal Order of Police Lodge 35, testified that the original intent of the 2009 agreement between the Executive and the FOP was to limit the effect of the imputed 4.25% GWA to the calculation of regular earnings for FY10. See ©26-29. Mr. Bader testified that Bill 18-09, which carried this imputed GWA into all future years, did not embody the actual intent of the parties. Mr. Bader added that since the FOP agreed with the Executive in collective bargaining this year to postpone the FY10 4.25% GWA for FY11, the Bill should be amended to limit the imputed GWA to FY10 and FY11. Mr. Bader stated that future years beyond FY11 would be subject to collective bargaining. With this amendment, Mr. Bader would support the Bill.

Issues

1. How would this Bill affect employees in the 3 bargaining units?

The County has three different retirement plans for its employees.² All public safety employees (police, fire, corrections, and deputy sheriffs) are members of the Employees' Retirement System (ERS). Although pension benefits differ between different ERS plans for public safety employees, each is a defined benefit plan with a pension benefit calculated using a formula based upon years of credited service and regular earnings. Non-public safety employees hired before October 1, 1994 are also in the ERS defined benefit plan. All non-public safety employees hired after October 1, 1994 are eligible for the Retirement Savings Plan (RSP) or the Guaranteed Retirement Savings Plan (GRIP). The RSP is a defined contribution plan where the County contributes 8% of an employee's salary and the employee contributes 4% of salary to a self-directed investment account.³ An employee's RSP benefit is based upon the value of the account at retirement. RSP participants may elect to participate in the GRIP instead of the RSP. The GRIP is a cash balance plan that creates a separate account for each employee funded by an 8% employer contribution and a 4% employee contribution. However, an employee's GRIP account is invested by the County Board of Investment Trustees (BIT). The County credits each account with a return on investment of 7.25% without regard for the actual returns received by the BIT.

The imputed GWA enacted by Expedited Bill 18-09 last year will provide a one-time payment of .36% of salary to members of the RSP and GRIP, averaging \$186 per member. The total cost of this one-time additional payment is \$919,750. **Bill 16-10 would not affect the pension benefit received by these employees.**

The imputed GWA provided a much larger benefit for ERS employees. Bill 18-09 included the GWA that employees did not receive in FY10 in the calculation of an employee's regular earnings for FY10 and compounded this imputed GWA into the calculation of regular earnings for each future year of an employee's County career. As noted above, the County's actuary estimated that this provision would cost **\$8.6 million** per year for up to 40 years. Most

² The County has a separate Elected Officials Retirement Plan that would not be affected by this Bill.

³ The 8% employer contribution should be compared with the average County contribution for ERS employees, which is currently almost 35% of salary.

of these costs are due to the compounding of this imputed GWA in future year salaries. In short, it requires the County to pay a defined pension benefit based, in part, on regular earnings that were never paid. **Bill 16-10 would not eliminate the use of the imputed GWA in FY10 earnings, but it would limit its use to the calculation of FY10 earnings.** An employee's defined benefit pension is based upon the highest earnings over either 12 months or 36 months. If an employee's FY10 regular earnings are part of the employee's highest 12 or 36 months of earnings, then the employee would receive the benefit of the imputed GWA. However, Bill 16-10 would prevent the compounding of the FY10 imputed GWA in the calculation of future earnings. Therefore, if an employee's FY10 regular earnings are not part of the employee's high 12 or 36 months, the employee would not benefit from the imputed GWA.

The breakdown of employees in each retirement group broken down by bargaining unit is:⁴

⁴ The following chart was provided by the Office of Human Resources at the request of Council staff.

County Employees
Retirement Enrollment
By Plan as of April 1, 2010

ERS Enrollment	
FOP	1,102
IAFF	1,113
MCGEO	1,763
Unrepresented	773
Total	4,751

GRIP Enrollment	
MCGEO	672
Unrepresented	249
Total	921

RSP Enrollment	
MCGEO	2516
Unrepresented	622
Total	3,138

State Plan Enrollment	
MCGEO	95
Unrepresented	50
Total	145

Not Enrolled in a Retirement Plan	
MCGEO	62
Unrepresented	32
Total	94

ERS - Employees Retirement System
GRIP - Guaranteed Retirement Income Plan
RSP - Retirement Savings Plan

The County's actuary, Mercer, now estimates that limiting the provision to FY10 would save **\$7.025 million** in FY11. The Council's actuarial advisor estimates a savings of \$7.2 million in FY11 and for future years as well. Total savings could exceed **\$200 million**. These savings from Bill 16-10 would not affect the pension benefit for 65% of the employees (3283 of 5046) represented by MCGEO or 54% of the unrepresented employees (921 of 1694).⁵

⁵ The 10 furlough days in the Executive's FY11 Recommended Budget are limited to non-public safety employees, which overwhelmingly targets RSP and GRIP employees who do not benefit from the ghost GWA after FY10.

2. Legal Authority.

Bill 16-10 would modify a law that was enacted to implement collective bargaining agreements with each of the 3 County employee unions. This raises the question as to the Council's legal authority to enact this Bill. The County Attorney and Council staff agree that Bill 16-10 would not violate the Contract Clause of the United States Constitution because it does not substantially impair vested legal rights. The Bill would apply prospectively to the calculation of regular earnings in future years that have not yet occurred. A copy of the County Attorney's Opinion dated April 18, 2010 is at ©9-12, and a copy of a Council staff legal opinion dated April 1, 2010 is at ©13-17.

3. What was the intent of the parties in collective bargaining last year?

Mr. Bader, on behalf of the FOP, and Mr. Sparks, on behalf of the IAFF, both testified that their intent was to limit the imputed GWA to FY10 only, subject to future collective bargaining. The Council requested a statement of intent from the Executive Branch at the public hearing. We have not yet received this. However, it is clear from the Council packets before the MFP Committee and the Council during deliberation on Bill 18-09 that the Executive Branch represented that the agreement between the parties would carry over the imputed GWA for the rest of an employee's career for the purpose of calculating retirement benefits. See the Bill 18-09 Action Packet dated May 13, 2009 at ©30-53, the Bill 18-09 Supplemental MFP Packet dated May 13, 2009 at ©54-64, and the Bill 18-09 MFP memo dated May 8, 2009 at ©65-68. No union officials disagreed with the Executive's description of the agreement at any of the Council sessions in 2009. In fact, the only dispute between the Executive and a union on this Bill was whether the parties intended to include the imputed GWA for RSP and GRIP employees represented by MCGEO. See ©52-53.

The Bill 18-09 packets are also clear that the Bill, as enacted, would carry over the imputed GWA for the rest of an employee's career. See ©31-32. An amendment proposed to limit the imputed GWA to FY10 was rejected by both the MFP Committee and the full Council. See ©32, 52, 67.

It is unnecessary for the Committee to determine the actual intent of the parties in 2009. Bill 18-09 amended the definition of regular earnings to include the imputed GWA for FY10 and beyond. A legislative amendment is necessary to change this law. Bill 16-10 would do this.

4. Should the Bill be amended to add FY11?

Mr. Bader testified that the Executive and the FOP agreed in their current collective bargaining agreement to extend the effect of the imputed GWA to FY11. We understand that the County's actuary is planning to attend the MFP worksession on April 29. We expect the actuary to be able to provide an estimate of the cost of amending the Bill to include FY11. The extension of the imputed GWA to regular earnings in FY11 would reduce the estimated savings of \$7.024 million in FY11. Although we do not know the cost of this amendment, it is difficult to justify this extension while the County is forced to balance its budget through a reduction-in-force and furloughs.

5. Should the Committee recommend approval of the Bill?

The cost of carrying the imputed GWA for the rest of an employee's career is almost half of the projected savings from the 10-day furlough recommended by the Executive. It is a benefit for less than half of the County employees. Finally, the testimony at the public hearing indicates that at least 2 of the 3 unions negotiating this agreement did not intend to extend this imputed GWA beyond FY10 last year. **Council staff recommendation:** approve the Bill as introduced.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 16-10
Concerning: Personnel - Retirement -
Imputed Compensation Limit
Revised: April 1, 2010 Draft No. 2.1
Introduced: April 6, 2010
Expires: October 6, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Andrews, Trachtenberg, and Berliner

AN EXPEDITED ACT to:

- (1) amend the definition of regular earnings to limit certain imputed compensation under the employees' retirement system to FY10 only; and
- (2) generally amend the law regarding the employees' retirement system.

By amending

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

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

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

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

30 (b) any statutory fringe benefit program sponsored by the County and
31 permitted by the Internal Revenue Code.

32 * * *

33 **Sec. 2. Expedited Effective Date.** The Council declares that this Act is
34 necessary for the immediate protection of the public interest. This Act takes effect
35 on July 1, 2010.

36 *Approved:*

37

38

Nancy Floreen, President, County Council Date

39 *Approved:*

40

Isiah Leggett, County Executive Date

41 *This is a correct copy of Council action.*

42

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 16-10

Personnel-Retirement-Imputed Compensation Limit

DESCRIPTION: Bill 18-09 required that the calculation of regular earnings used to determine a retirement benefit include the general wage adjustment for FY10 as if the employee had received it on July 1, 2009. This imputed compensation is scheduled to carry over into the calculation of regular earnings used to calculate a defined benefit pension for the rest of an employee's County career. Expedited Bill 16-10 would amend the Retirement Laws to limit the effect of the imputed compensation to the calculation of regular earnings for FY10 only.

PROBLEM: The County has experienced a severe reduction in revenue and must reduce its FY11 expenditures in order to balance the budget.

GOALS AND OBJECTIVES: The estimated savings of \$7.2 million for FY11 would partially offset the need to use furloughs or a reduction-in-force to reduce expenditures.

COORDINATION: Human Resources, County Attorney

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: Not applicable

Douglas L. Rowe, FSA, MAAA, EA
Principal

MERCER



MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

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April 27, 2009

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

Confidential
Via Electronic Mail

Subject: Imputed Compensation Pension Cost

Dear Wes:

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

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

Cost Calculated From Two Viewpoints

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

Other Considerations – Legislation Only Viewpoint

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

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

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Montgomery County Government

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

Other Considerations – Package Viewpoint

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

Plan Provisions

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

Estimated Costs of Proposed Changes

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

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

Numbers may not add up due to rounding.

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

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

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

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

Numbers may not add up due to rounding.

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

Sincerely,

Douglas L. Rowe, FSA, MAAA, EA
Principal

Copy:
Aquil Ahmed, Mercer

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

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MEMORANDUM

DATE: May 6, 2009

TO: Management and Fiscal Policy Committee

FROM: Thomas Lowman, Bolton Partners, Inc. TL

SUBJECT: Comments on the Pension Amendment/definition of compensation

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

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

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

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

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



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
Acting County Attorney

MEMORANDUM

TO: Wes Girling
Office of Human Resources

FROM: Marc Hansen *Marc Hansen*
Acting County Attorney

DATE: April 18, 2010

RE: Bill 16-10, Retirement-Imputed Compensation Limit

Kathleen Boucher, Assistant Chief Administrative Officer, has asked this Office to review for legal sufficiency Bill 16-10. The Bill, which limits an imputed compensation increase for retirement benefits calculation purposes to FY 2010, raises the issue of whether the Bill violates the contract clause of the United States Constitution. I conclude that Bill 16-10 does not violate the contract clause, because the legislation operates prospectively.

Contract Clause Analysis

Article I, §10, clause 1 of the United States Constitution provides that “No State shall...pass any Law impairing the Obligations of Contracts...” Courts have held that this clause does not prohibit governments from impairing contracts, but limits a government’s right to do so. A violation of the contract clause occurs only if the government substantially impairs a party’s right under the contract. Legitimate expectations of the parties determine whether the impairment was substantial. However, a government may substantially impair a contract if reasonable and necessary to serve a legitimate public purpose. Courts generally defer to the government in determining the reasonableness and necessity of a particular measure, unless the government seeks to impair its own contracts.

But where the government acts to impair its own contracts, the courts apply a more rigorous analysis to determine if the impairment is appropriate. A court will not uphold legislation that

impairs a government's own contracts unless the impairment is both reasonable and necessary. Reasonableness is determined in light of whether the contract had "effects that were unforeseen and unintended by the legislature". Necessity means that the government did not have a less drastic modification available and the government could not achieve its goals without altering the contractual terms.¹

Maryland courts have held that pension plans statutes establish contractual rights between employees and the government. Although the pension plans constitute contractual benefits, under certain circumstances, governments can modify the terms of a pension plan as long as the changes do not adversely affect the benefits, or if adversely affected, are replaced with comparable benefits.² In *Baltimore Teachers Union v. Mayor and City Council*,³ the Fourth Circuit Court of Appeals noted that the Supreme Court provided little guidance as to what constitutes substantial impairment, but concludes that a substantial impairment occurs "where the right abridged was one that induced the parties to contract in the first place . . . or where the impaired right was one on which there had been reasonable and especial reliance."⁴ Following the Fourth Circuit's decision in *Baltimore Teachers Union*, the United District Court for Maryland found that the diminution of pension benefits is more likely than not a substantial impairment because individuals plan their lives based on pension benefits.⁵

The Contract Clause Prohibits Retroactive Impairment

Generally a contract clause issue only exists if the legislation operates retroactively, not prospectively. There can be no expectation that pension plans can not be altered as to future benefits to be earned by future service. As the United States District Court for Maryland noted in *Maryland State Teachers Association, Inc. v. Hughes*⁶, a government cannot enter into a contract binding subsequent legislatures to pay government employees a specified level of compensation in the future. The Court stated,

In fact, the plaintiffs [the Teachers Association], presumably recognizing the preposterousness of a position that a contract of this type is irrevocable, admit that the contract asserted to exist here may be altered.

Under Maryland law, the State has reserved the power to amend or alter pension contracts, and that reserved power ". . . is part of each pension plan which a legislature enacts, whether explicitly or not." [Citations omitted]⁷

Hughes involved a number of prospective changes to the Maryland teachers' retirement system that included a change to the formula used to calculate retirement benefits from 1.8% of average

¹ *United States Trust of New York v. New Jersey*, 431 U.S. 1 (1977); *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234.

² *City of Frederick v. Quinn*, 371 A.2d 724 (1977).

³ 6 F.3d 1012 (4th Cir. 1993).

⁴ *Id.*, 1017.

⁵ *Andrews v. Anne Arundel County*, 931 F.Supp. 1255 (1996), *affirmed without opinion*, 114 F.3d 1175 (1997), *cert. denied* 522 U.S. 1015 (1997)

⁶ 594 F. Supp. 1353, 1362 (1984). *See also, Howell v. Anne Arundel County*, 14 F. Supp. 2d 752 (D. Md. 1998).

⁷ *Id.*, 1362.

final compensation to .8% of average final compensation for years of service earned after the effective date of the legislation. The Court upheld these changes because they were prospective.

Impairment Permitted if Necessary and Reasonable

If there is a retroactive impairment, the necessity and reasonableness of a particular legislative act is a factual inquiry. In *Baltimore Teachers Union v. Baltimore*,⁸ the Fourth Circuit held that a mid-year City salary reduction plan adopted to meet immediate budgetary shortfalls did not violate the contract clause. Although the court found that Baltimore City had substantially impaired its contract with its employees, the Court concluded that the City's action was reasonable and necessary. Preserving the City's financial integrity was a significant public purpose justifying City action.

Although the US District Court in *Hughes* held that the plaintiffs did not suffer any impairment because the changes to the pension plan were prospective, the Court discussed whether the changes were reasonable and necessary had there been an impairment. The Court concluded that due to the financial circumstances of the pension system and the State, the non drastic nature of the impairment and the unavailability of a more moderate course of action, the changes would be permitted.

On the other hand, in *Andrews v. Anne Arundel County*,⁹ which involved retroactive changes to a pension plan, the Court did not find the County's action to be reasonable and necessary. Although the County argued the legislation was necessary for the restoration of the actuarial soundness of the A&E Plan, the Court ruled that the County "has failed to make a sufficient showing that the means which it has adopted to address the problem is the least drastic available."¹⁰ The Court also noted that the County acknowledged that an emergency did not exist and that courts have typically upheld "such extreme modifications only in the face of an emergency or temporary situations".¹¹

Application to Bill 16-10

The Montgomery County Code creates a contract by providing the terms of the defined benefit retirement plan (ERS). The ERS provides a monthly retirement benefit generally based on the highest average consecutive 36 months of earnings and years of credited service. Last year, in accordance with the collective bargaining agreements, the Council amended the definition of earnings to provide that a member's benefit would include a 4.5% cost of living adjustment (COLA) for FY 2010—even though the COLA was not, in fact paid to employees. This means that, unless amended, any future increase in earnings would include the 2010 COLA and could impact a member's retirement benefit regardless of the year a member retired. The proposed legislation limits the 2010 COLA to 2010 earnings. This means that only members who retire with 2010 included as their highest average consecutive 36 months of earnings would benefit.

⁸ 6 F.3d 1012 (4th Cir. 1993), cert. denied, 510 U.S. 1141 (1994).

⁹ See fn 5, *supra*.

¹⁰ 931 F.Supp. at 1266,

¹¹ *Id.*

All other members would no longer have the COLA included in their earnings for the purpose of calculating their pension benefit.

In order for a contract clause violation to occur in a pension plan statute, the legislation must operate retroactively. Bill 16-10 operates prospectively because the effective date is July 1, 2010, and earnings would include the imputed COLA for fiscal year 2010. The imputed COLA would not apply to future earnings and any member whose highest average consecutive 36 months of earnings includes 2010 receives the imputed COLA.

One might argue that the legislation does have a retroactive effect because the majority of members will no longer have the imputed COLA included in their earnings for years of service earned before June 30, 2010. For example, without the proposed legislation a member whose imputed COLA equaled \$1,000 would have that \$1,000 included in the member's benefit even if that member retired in 2020. Under the Bill, the member no longer receives that \$1,000 COLA even with regard to service earned before the change in law. But this argument assumes continued COLA's that will build on top of the elevated base created by the imputed COLA granted in FY 2010. Employees have no contractual right to expect compensation increases in the future. In fact, no legal principle would prevent a future Council from nullifying the effect of the imputed COLA by offsetting a future COLA by an appropriate amount. Basing an argument for retroactivity on some perceived right to future compensation increases is flawed for the reason pointed out in *Hughes*—the power to amend pension contracts is reserved to the government.

Because I have concluded that the Bill does not have a retroactive effect, I have found that it is not necessary to determine whether the change made by Bill 16-10 would constitute a necessary and reasonable impairment. Nevertheless, because litigation has been threatened by at least one employee union, I recommend that significant information concerning the depth of the current budget crisis that has overtaken the County should be included in the legislative history of Bill 16-10 so that an alternative argument can be made that the change proposed by Bill 16-10 is reasonable and necessary.

Please let me know if you have any questions or concerns about this advice.

Cc: Kathleen Boucher
Amy Moskowitz
Joe Beach
Joe Adler
Ed Lattner
Bob Drummer

MEMORANDUM

April 1, 2010

TO: Steve Farber, Council Staff Director

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Council's Authority to Amend the Imputed Compensation Law

You have requested an opinion concerning the Council's authority to amend the changes to the retirement laws enacted in Expedited Bill 18-09, Personnel-Retirement-Imputed Compensation. Specifically, you have requested a review of the Council's authority to amend the retirement laws to limit the effect of the imputed compensation to the calculation of regular earnings for FY10 only.

Background

Bill 18-09 was introduced at the request of the Executive to implement collective bargaining agreements with the 3 County employee unions last year. Each of these agreements contained a provision to "postpone" a previously negotiated general wage adjustment, but also provided that the calculation of regular earnings used to determine a retirement benefit must include the general wage adjustment for FY10 as if the employee had received it on July 1, 2009. This imputed compensation is scheduled to carry over into the calculation of regular earnings used to calculate a defined benefit pension for the rest of an employee's County career.¹ The County's actuary estimated that this imputed compensation would require the County to increase its annual contribution to the ERS Trust Fund by \$8.589 million per year for the next 40 years.²

Issues

1. Can the Council, without further collective bargaining, enact a Bill that would modify laws which resulted from collective bargaining agreements or involves issues that are within the scope of collective bargaining?

For the reasons discussed below, Council staff concludes that the Council has complete authority to enact legislation which involves a mandatory topic of collective bargaining or amends a law that was enacted to implement a collective bargaining agreement.

¹ Bill 18-09 also provided an imputed compensation increasing the Employer's contribution to the Retirement Savings Plan and the Guaranteed Retirement Income Plan for FY10 only.

² The actual savings from limiting this imputed compensation to FY10 is estimated to be \$7.2 million for FY11.

Delegation of legislative authority. The current County Charter was adopted by the voters in 1968, as authorized by Article XI-A of the Maryland Constitution. Article XI-A, §3 provides that:

Every charter so formed shall provide for an elective legislative body in which shall be vested the law-making power of said City or County. Such legislative body in the City of Baltimore shall be known as the City Council of the City of Baltimore, and in any county shall be known as the County Council of the County.

* * *

...the County Council of said County, subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws of said City or County including the power to repeal or amend local laws of said City or County enacted by the General Assembly, upon all matters covered by the express powers granted as above provided, and, as expressly authorized by statute. (Emphasis added)

Charter §101 vests all of the County's legislative powers in the County Council:

All legislative powers which may be exercised by Montgomery County under the Constitution and laws of Maryland, including all law making powers heretofore exercised by the General Assembly of Maryland but transferred to the people of the County by virtue of the adoption of this Charter, and the legislative powers vested in the County Commissioners as a District Council for the Montgomery County Suburban District, shall be vested in the County Council..... (emphasis added)

The Maryland Court of Appeals has consistently restricted the delegation of the legislative power assigned to a county council in a home rule charter county. See *Mugford v. Baltimore*, 185 Md. 266 (1945) (agreement with union to deduct dues from employees was an unlawful delegation of governmental power); *MCEA v. Anderson*, 281 Md. 496, 508 (1977) (arbitration to determine public employees compensation was an unlawful delegation of legislative authority); *Baltimore v. AFSCME*, 281 Md. 463 (1977) (MOU between union and employer could not bind the employer to propose certain budget appropriations for employee salaries). In *Office & Professional Employees v. Mass Transit Administration*, 295 Md. 88, 97 (1982), the Court opined with regard to collective bargaining:

It is established in this State that, absent express legislative authority, a government agency cannot enter into binding arbitration or binding collective bargaining agreements establishing wages, hours, pension rights, or working conditions for public employees.

The express legislative authority for a County to enter into binding collective bargaining agreements must flow from either a public general law enacted by the General Assembly or the County Charter. In this County it derives from the Charter. Charter §510 authorizes the Council

to enact a collective bargaining law with binding arbitration for police officers.³ §510A does the same for career fire fighters, and §511 authorizes the Council to enact a collective bargaining law for other County employees that may include binding arbitration.

The legislative history of the first collective bargaining law for police officers in 1982 (Bill 71-81) indicates that the Council interpreted Charter §510 to authorize arbitration of collective bargaining impasses that binds the Executive, but not the Council. Both the Executive and the police union (Fraternal Order of Police Lodge 35) agreed that §510 required the new collective bargaining law to include interest arbitration of collective bargaining impasses, but disagreed on whether the Council, as well as the Executive, must be bound by an arbitration award. The FOP argued at the Council worksessions that if interest arbitration was not binding on the Council it could not be considered classic interest arbitration. The Council ultimately rejected this argument, and the interest arbitration included in the enacted law did not bind the Council.⁴

The Council enacted a separate collective bargaining law under each of these Charter amendments (Police: County Code §§33-75 through 33-85; County employees: County Code §§33-101 through 33-112; Fire and Rescue employees: County Code §§33-147 through 33-157). Each collective bargaining law provides that the Executive, as the employer, must bargain with the certified employee representative over certain mandatory topics of bargaining. Under each law the Council must approve -- and retains the authority to reject -- any term or condition of a collective bargaining agreement that requires an appropriation of funds or enactment, repeal, or modification of a County law or regulation. **In none of these laws did the Council delegate its legislative power to enact and amend County legislation.** The Executive has a duty under each collective bargaining law to bargain with a certified employee representative; the Council does not.

For example, the collective bargaining agreement executed by the Executive and MCGEO in 2008 provided that “*the parties shall submit legislation* to the County Council that would establish a one-time irrevocable choice between the Retirement Savings Plan (RSP) and the Guaranteed Retirement Income Plan (GRIP) for non-public safety employees hired on or after July 1, 1994.” (*emphasis added*) **The agreement did not bind, and could not have bound, the Council to enact the proposed legislation.** (The Executive submitted this proposed legislation and the Council enacted it as Bill 11-08.)

The Council’s exercise of its legislative power to implement a collective bargaining agreement necessarily includes the power to repeal or amend the same legislation at any point in

³ A recent reported decision by the Court of Special Appeals in *Wicomico County FOP v. Wicomico County*, No. 2034 (February 1, 2010) calls into question the legality of the Montgomery County Charter provisions requiring the Council to enact collective bargaining laws for police and fire with binding arbitration. The Court held that a charter provision requiring the Council to enact a collective bargaining law with binding arbitration violated the Maryland Constitution because it was tantamount to enacting legislation in the Charter. The Court held that the collective bargaining law enacted by the Wicomico Council was therefore invalid. Montgomery County Charter §510 (police) and §510A (fire) each requires the Council to enact a collective bargaining law with binding arbitration.

⁴ This legislative history is detailed on pages 66-70 of Office of Legislative Oversight Report No. 2009-5, released December 2, 2008, written by Leslie Rubin of OLO.

the future. This legislative power exists without regard to whether the law involves a mandatory topic of bargaining under the collective bargaining laws or was enacted to implement a collective bargaining agreement executed by the Executive and an employee representative; nothing in the Charter or the collective bargaining laws limits it in those cases.

2. Would a law limiting the imputed compensation to the calculation of regular earnings for FY10 impair a County employee's contractual rights in violation of the Contract Clause of the United States Constitution?

The Executive agreed with each of the 3 County employee unions during collective bargaining in 2009 to submit legislation to the Council providing for the imputed compensation. Each collective bargaining agreement was transmitted to the Council for approval of items requiring funding or legislation. The Council enacted Expedited Bill 18-09 to implement the imputed compensation. Therefore, it is important to determine if a law limiting this imputed compensation to FY10 only would impair a County employee's contractual rights in violation of the Contract Clause of the United States Constitution (Art. I, §10). In *Parker v. Wakelin*, 123 F.3d 1 (1st Cir. 1997), cert. denied, 140 L. Ed. 2d 813, 118 S. Ct. 1675 (1998), the Court summarized the analysis necessary to determine this question:

The Supreme Court has elaborated an analysis under which a court must first ascertain whether a change in state law has resulted in "the substantial impairment of a contractual relationship." *General Motors Corp. v. Romein*, 503 U.S. 181, 186, 112 S. Ct. 1105, 1109, 117 L. Ed. 2d 328 (1992) (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244, 98 S. Ct. 2716, 2722, 57 L. Ed. 2d 727 (1978)). Next, the reviewing court must determine whether the impairment is nevertheless justified as "reasonable and necessary to serve an important public purpose." *United States Trust Co.*, 431 U.S. 1 at 25, 97 S. Ct. 1505 at 1519, 52 L. Ed. 2d 92. . . . The first step described above can be further broken down into "three components: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial."

In *Bd. of Trustees. v. Mayor & City Council of Baltimore City*, 317 Md. 72, 100 (1989), the Maryland Court of Appeals held that "under Maryland law, pension plans create contractual duties toward persons with *vested* rights under the plans." (*emphasis added*) Therefore, a County retirement plan can create a contractual duty toward an employee with a vested right under the plan. However, a law enacted by the Council during FY10 that limits the imputed compensation to the calculation of regular earnings for FY10 would only apply prospectively. In *Howell v. Anne Arundel County*, 14 F. Supp. 752 (D. Md. 1998), the Court held that a County law decreasing the maximum cost of living adjustment to a County pension that only applied to benefits accrued after the effective date of the law did not violate the Contract Clause because it did not retroactively reduce a member's vested benefits. Similarly, a law enacted in FY10 that limits the imputed compensation to FY10 only does not retroactively reduce a vested benefit. It only affects the calculation of regular earnings for future years. Therefore, the law would not impair a contractual relationship in violation of the Contract Clause.

Even, assuming *arguendo*, if an employee's contractual rights have vested, every modification of a contract does not result in an unconstitutional impairment.⁵ The legislative body always retains the right to make reasonable modifications to vested rights for an important public purpose. In *Baltimore Teachers Union, et al v. Mayor and City Council of Baltimore*, 6 F.3d 1012 (4th Cir. 1993), the Court held that a furlough imposed during a fiscal year did not violate the Contract Clause even though it was a substantial impairment of vested contractual rights because the modifications made by the City were reasonable under the circumstances. The Court relied on evidence of reductions in State funding that caused a budget deficit for the City. The Court held that the City's decision to use furloughs to help balance its budget was a reasonable alternative to more detrimental actions, such as layoffs.

The County's historic reduction in revenue in the past two years and its recent reduction in reserve funds would provide strong factual support for a Court to conclude that a law limiting the imputed compensation to FY10 was a reasonable modification for an important public purpose. The recent decision in *FOP v. Prince George's County*, 645 F. Supp. 2d 492 (D. Md. 2009), holding that a County-imposed furlough violated the Contract Clause underscores the importance of evaluating the facts surrounding the decision to modify a contract. In *FOP v. Prince George's County*, the Court held that the decision to impose furloughs on employees soon after approving pay raises and refusing to dip into a \$230 million reserve fund made the County's decision unreasonable under the circumstances. The facts in *FOP v. Prince George's County* are distinguishable from the facts behind a law which the Council could enact during FY10 that would limit the imputed compensation.

For these reasons, a law limiting imputed compensation to the calculation of regular earnings in FY10 would not violate the Contract Clause in Article I, §10 of the United States Constitution.

⁵ Since the collective bargaining agreement with the FOP and MCGEO each expires on June 30, 2010, a law limiting the imputed compensation to FY10 earnings enacted during FY10 may not even modify an existing contract. However, the collective bargaining agreement with the IAFF expires on June 30, 2011.

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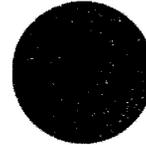
OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

April 23, 2010



2010 APR 26 AM 8:55

RECEIVED
MONTGOMERY COUNTY
COUNCIL

TO: Nancy Floreen, President, County Council
FROM: Joseph F. Beach, Director *JFB*
SUBJECT: Expedited Bill 16-10 – Imputed Compensation Limit

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

LEGISLATION SUMMARY

Expedited Bill 16-10 limits the effect of legislation the Council adopted last year as part of the wage concession agreements with the County's three employee organizations. Those agreements required the calculation of regular earnings used to determine a retirement benefit include the FY10 general wage adjustment that was not paid in FY10. The expedited bill amends the Employees' Retirement System to limit the effect of imputed compensation on the calculation of regular earnings to FY10 only.

FISCAL SUMMARY

The legislation is expected to reduce retirement system costs because the permanent benefit enhancement approved last year would instead be a one-time improvement limited to FY10 only. The attached letter from the plan actuary, Mercer Consulting, outlines the assumptions used to estimate the cost savings of between \$7.1 million and \$7.5 million. As the plan actuary notes, cost savings will change over time due to experience and the ultimate savings will depend on the pattern of future pay increases and the timing of plan members' retirement. The County Executive's budget adjustment package transmitted on April 22, 2010 assumes tax supported savings of \$6.6 million and non-tax supported savings of \$424,510 related to this legislation. The detailed allocation of these reductions across all departments has been transmitted separately to Council staff.

Nancy Floreen, President, County Council

April 23, 2010

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The following contributed to and concurred with this analysis: G. Wesley Girling, Office of Human Resources, Alex Espinosa and Lori O'Brien, Office of Management and Budget.

JFB:ae

Attachment

c: Joseph Adler, Director, Office of Human Resources
Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
G. Wesley Girling, Office of Human Resources
Alex Espinosa, Office of Management and Budget
Lori O'Brien, Office of Management and Budget

Douglas L. Rowe, FSA, MAAA, EA
Principal

MERCER



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Confidential
Via Electronic Mail

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

April 21, 2010

Subject: Expedited Bill 16-10 – Imputed Compensation Limit

Dear Wes:

This letter summarizes the savings calculations you requested for the imputed compensation limit bill. The calculations are based on the July 1, 2009 actuarial valuation data for groups A, E, F, G and H members. The actuarial assumptions and methods and plan provisions are the same as those used in our July 2009 actuarial valuation report except for the assumptions and provisions noted below.

By cost/savings, we mean the change in Normal Cost and an amortization of any changes in unfunded liability unless otherwise indicated. Cost/savings will change over time as experience develops. Please note that actual ultimate savings of the imputed compensation will depend on the pattern of future pay increases and the timing of plan members' retirement. For example, there will be no savings for anyone who retires on or before July 1, 2010. The maximum savings will be realized for any member who retires at a time when his/her average final earnings exceeds his/her average final earnings at July 1, 2010.

We have based the savings on the July 1, 2009 valuation date assuming that the County would prefer to recognize the savings in FY2011. However, recognizing the savings from this bill without recognizing the cost of the Retirement Incentive Plan/Discontinued Service Pension in the same period may be an issue with the County's auditor and/or bond rating agencies.

Other Considerations

We have recommended that the County consider a shorter amortization period for future plan improvements in order to restore the funded ratio more quickly following a benefit improvement and in order to better align the cost of the improvement with the service of participants receiving an increase for service already performed. Applying that concept to this change might result in a 10 to 20 year amortization period. We show detailed results below for the County's traditional 40-year amortization period. Amortizing this savings over a shorter period than the amortization for last year's bill which adopted imputed compensation would be questionable.

MERCER



MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

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April 21, 2010
Mr. Wes Girling
Montgomery County Government

The dollar impact of the Normal Cost decrease on the County's contribution will tend to increase as employees near retirement, but decrease as the number of affected employees decreases over time. Please let me know if you would like a projection to quantify this pattern. Everything else being equal, the savings impact will increase (decrease) if actual future pay increases exceed (trail) assumed pay increases. The amortization payment will remain level for the chosen period – 40 years unless a shorter period is chosen.

Plan Provisions

The 4.50% (for Groups A, E and H), 4.25% (for Group F) and 4.00% (for Group G) imputed compensation increases that were adopted last year for employees on July 1, 2009 would only apply to earnings for FY2010.

Estimated Savings for Proposed Change

- Annual savings using 40-year amortization for represented and non-represented members: \$7.1 to 7.5 million
- Reduction in Actuarial Accrued Liability for represented and non-represented members: \$55-58 million

Assumptions

No savings will be realized by employees in the Optional Non-Integrated or Optional Integrated Plan because they will retire when FY2010 pay affects their Average Final Earnings.

5% to 10% of the value of benefits for Mandatory Integrated employees will be paid based on FY2010 pay, thus not producing savings.

Mercer has prepared this letter exclusively for the Montgomery County Government for the purpose of illustrating the contribution reduction for the proposed bill. This letter may not be used or relied upon by any other party or for any other purpose. Mercer is not responsible for the consequences of any unauthorized use.

This letter includes projections of future funding costs and/or benefit related results. To prepare these projections, various actuarial methods and assumptions, as described above and in our 2009 actuarial valuation report, were used to project two scenarios from a range of possibilities. However, the future is uncertain, and the system's actual experience will

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April 21, 2010
Mr. Wes Girling
Montgomery County Government

likely differ from the assumptions utilized and the scenarios presented; these differences may be significant or material. In addition, different assumptions or scenarios may also be within the reasonable range and results based on those assumptions would be different. This report has been created for a limited purpose, is presented at a particular point in time and should not be viewed as a prediction of the system's future financial condition.

Because actual plan experience will differ from the assumptions, decisions about benefit changes, investment policy, funding amounts, benefit security and/or benefit-related issues should be made only after careful consideration of alternative future financial conditions and scenarios and not solely on the basis of a valuation report or reports.

This letter is based on data provided by the County and plan provisions as described in our 2009 actuarial valuation report. The County is solely responsible for the validity, accuracy and comprehensiveness of this information. If the data or plan provisions supplied are not accurate and complete, the valuation results may differ significantly from the results that would be obtained with accurate and complete information; this may require a later revision of this letter.

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

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

Sincerely,

A handwritten signature in cursive script that reads "Douglas L. Rowe".

Douglas L. Rowe, FSA, MAAA, EA
Principal

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**Testimony before the County Council
on Expedited Bill 16-10, Personnel - Retirement - Imputed Compensation Limit
Joan Fidler, President, Montgomery County Taxpayers League
April 27, 2010**

Madam President and members of the Council, thank you for the opportunity to testify against the continuation of the phantom or “ghost” COLA that was passed by the Council last year.

I am Joan Fidler, President of the Montgomery County Taxpayers League and I am here today on behalf of the taxpayers of the County and in support of Expedited Bill 16-10. As a well-known author once wrote: “It was the best of times, it was the worst of times”. These are not the best of times for Montgomery County. We are facing a budget shortfall of close to \$1 billion with painful decisions ahead of you that will have, in many cases, a devastating impact on the services offered to the residents of the County. You have no choice but to repeal the ghost COLA you so generously offered County employees last year. Though the COLA has been characterized as a phantom, in reality, it has already cost us taxpayers \$7 million this year. If continued, this phantom will loom over us in the amount of \$200 million over the next 2 decades. We cannot afford it.

Which brings us to the irony of the situation. The cost of living actually dropped last year, yet the Council voted for a ghost COLA. More ironic, you denied County employees a one-year COLA yet gave them a lifetime ghost COLA.

As I have testified before, the Taxpayers League recognizes the value of our County employees - they are dedicated and hard-working. We are proud of the services they provide us. And yes, I expect they will say a deal is a deal.

But the fact is that revenues continue to drop — and the predicted budget gap increases. In September 2009, the budget gap was \$370 million. By December, it grew to \$608 million. On March 15, it was \$779 million. On April 22, the County Executive reported the gap had grown to nearly \$1 billion, or more than 25% of the tax-supported budget. To add to the gloom and doom, Montgomery County now has 30,000 unemployed workers. The stimulus funds which have served as a band aid will soon end. Our draining of the Rainy Day Fund has not gone unnoticed by Moody’s. Need I say more?

Members of the County Council, the journey of eliminating a deficit of \$1 billion begins with \$7 million? Won’t you take the first obvious step and vote for Bill 16-10?

Thank you.

Margaret Greene
Testimony on “Imputed Compensation”
April 27, 2010

The financial outlook for Montgomery County and for local governments across the nation is rapidly deteriorating. The usual sources of money – state governments and local property taxes – have been hit hard by the recession. Federal stimulus money that is earmarked for education has largely been spent. Hundreds of thousands of teachers across the United States may lose their jobs in June. The outlook for local revenue looks worse for 2010-11 than in the current year.

In Montgomery County, County Executive Ike Leggett has proposed both the elimination of pay raises for county employees and the imposition of furloughs. The picture is bleak. Libraries have been cut 22%, transportation has been cut 23%, the Department of Housing and Community Affairs by 24%, and Health and Human Services by 11%. I attended the public hearing in Rockville on proposed cuts to Metro. The testimony from the county’s less privileged and special needs residents, who are particularly dependent on public transportation, was enough to make you cry.

Even last year, when the extent of the revenue decline wasn’t known, the County realized that it could not afford a 4% scheduled wage increase for 5,000 police officers, firefighters and general government workers. In place of the wage increase Ike Leggett negotiated lifetime pension benefits for these workers based on the pay increases that they were not going to receive. The Council went along with this unusual arrangement. Today it is clear to all that the County cannot afford these co-called “phantom COLAs” and should never have committed the taxpayers to future expenses of about \$7 million annually, totaling \$200 million over the next forty years.

Over the past year it has become apparent that public employee pensions are a fast-growing problem and may soon pose the next big financial threat to the nation’s economy. Since states and counties, unlike the

Federal Government, cannot print money, it is imperative for Montgomery County to pursue a conservative and prudent fiscal policy. Therefore the arrangement guaranteeing benefits based on pay increases that were never received must be rescinded.



Fraternal Order of Police
Montgomery County Lodge 35

18512 Office Park Drive
Montgomery Village, Maryland 20886

Bill No. 16-10, Retirement – Imputed Compensation Limit

April 27, 2010

Good afternoon. I am Walter E. Bader representing Fraternal Order of Police, Montgomery County Lodge 35 and am here to testify concerning Bill 16-10.

County Code Section 33-35 **Definitions**, enacted just last year¹, has its origins in what has been called a “concession agreement” between FOP Lodge 35 and the County.² This provision was intended only to preserve the pension benefit for those who actually retire and who otherwise would have their pensions adversely affected as a result of the voluntary postponement of the previously negotiated and scheduled FY 2010 General Wage Adjustment [“GWA”].

Under the agreement, an amount equal to the “postponed” General Wage Adjustment is included in the calculation of pension benefits only for those who retire with the postponed GWA included in their Average Final Earnings [“AFE”]. Without this provision, the postponed GWA would have resulted in a permanent, lifetime reduction in pensions for those whose AFE include any period of the wage postponement.

This Bill has identified a gross misunderstanding between what we intended and what the executive thought was bargained. Obviously, we looked at Bill 19-09 in the context of our intent while others are looking at it as something far more costly. I will try to clear up the confusion.

This is nothing but the residual preservation of a benefit in the context of employees’ generous, peaceful give-back of cash compensation.

It is neither phantom, nor a “COLA”. It is not a gift from the county either.

For FY 10, police officers gave back nearly \$5 Million in negotiated wages for one year. Now, we have agreed to postpone the GWA for a second consecutive year. Importantly, had the GWA not been postponed, the county would not have realized the \$4.9 Million in pay concessions, however, the pension benefit for those retiring in the near future would have been exactly what it is with the imputed compensation. See example, attached.

There never was an intent that this imputed benefit would apply to anyone after the postponed GWA is no longer a factor in calculating final earnings. Let me be clear: It is not now, and never was, our intent that this be a permanent 4.25% enhancement for all future retirees hired after July 1, 2009.³

¹ Expedited Bill No. 18-09, Introduced April 14, 2009.

² Article 57, Section M.7, CBA, July 1, 2009 – June 30, 2011.

³ In Fairfax County, VA police officers receive a permanent 3% enhancement to their average final earnings.

In a May 6, 2009 memorandum to the MFP Committee, actuary Thomas Lowman of Bolton Partners, Inc., said that his “understanding is that this change [Bill 18-09] is permanent ... this means that someone retiring 20 years from now will have their pension based on a higher pay amount [than] they actually will be receiving in 17-20 years”⁴ While this may have been the executive’s understanding, it was not our intent.

Mr. Lowman goes on to say, “If someone’s final average pay does not include pay in FY 10 (most will leave far enough into the future that it will not include FY 10), there will be no impact on their pension. This makes the cost materially less than what Mercer determined for the more generous proposal.” Indeed, **this is consistent with our bargained intent.**⁵

The only difference between the effect of Bill 16-10 and the intent of our contract and, what we thought was the intent and effect of Bill No. 18-09, is that our contract provides that all years of the “postponed” GWA be included whereas Bill 16-10 includes only FY 10.

We support the bargained intent for all years of the postponed 4.25% GWA and oppose any attempt to limit it to any fiscal year. This results in a FY 11 savings of about \$7 Million.

Thank you.

⁴ Memorandum is at circle 8 of the April 27, 2010 packet for this public hearing. (Agenda Item 10.)

⁵ This would now include FY 11 due to continued postponement of the GWA, as well as all years of continued \ postponement.

FOP Intent:

A Police Officer III (Pay Grade P4) with 25 years credited service who retires on July 1, 2010 would have a pension based on the high consecutive 36 month (typically, three year) average of wages of \$83,437, \$86,774, \$86,774 plus an imputed amount equal to the postponed 4.25% GWA or $(\$90,462 - \$86,774) = \$3,688$. Average Final Earnings: **\$86,891**.

Without the imputed amount, AFE would be \$85,662 (a reduction of 1.4%).

Had the GWA not been voluntarily postponed, the final average would have been **\$86,891**.

(The actual pension would be considerably less than AFE. The exact amount depends on the payment option elected.)

Council Bill 16-10
Attachment to Testimony
FOP Lodge 35
April 27, 2010

Average Final Earnings With Voluntary Wage Concessions [†]

Effective Date (Pay or Retire)	Scheduled/ Bargained Pay	Percent of Pay Postponed	Dollars Postponed	Actual Pay (Bargained - Postponed)	Pay for Retirement Calculations & "Imputed"	Actual Average Final Earnings	"Imputed" Average Final Earnings	Difference (Imputed - Actual)	Difference (Imputed - Actual)/ Actual	Avg Final Earnings - Actual Final Pay
Jul-05	\$74,608	0.00%	\$0	\$74,608	\$74,608					
Jul-06	\$77,615	0.00%	\$0	\$77,615	\$77,615					
Jul-07	\$83,437	0.00%	\$0	\$83,437	\$83,437					
Jul-08	\$86,774	0.00%	\$0	\$86,774	\$86,774	\$78,553	\$78,553	\$0	0.00%	-\$8,221
Jul-09	\$90,462	4.25%	\$3,688	\$86,774	\$90,462	\$82,609	\$82,609	\$0	0.00%	-\$4,165
Jul-10	\$90,462	4.25%	\$3,688	\$86,774	\$90,462	\$85,662	\$86,891	\$1,229	1.42%	\$117
Jul-11	\$90,462	0.00%	\$0	\$90,462	\$90,462	\$86,774	\$89,233	\$2,459	2.72%	-\$1,229
Jul-12	\$93,176	0.00%	\$0	\$93,176	\$93,176	\$88,003	\$90,462	\$2,459	2.64%	-\$2,714
Jul-13	\$95,971	0.00%	\$0	\$95,971	\$95,971	\$90,137	\$91,367	\$1,229	1.28%	-\$4,605
Jul-14						\$93,203	\$93,203	\$0		

Average Final Earnings w/o Voluntary Wage Concessions

Effective Date (Pay or Retire)	Scheduled/ Bargained Pay	Percent of Pay Postponed	Dollars Postponed	Actual Pay (Bargained - Postponed)	Pay for Retirement Calculations & "Imputed"	Actual Average Final Earnings	"Imputed" Average Final Earnings	Difference (Imputed - Actual)	Difference (Imputed - Actual)/ Actual	Avg Final Earnings - Actual Final Pay
Jul-05	\$74,608	0.00%	\$0	\$74,608	\$74,608					
Jul-06	\$77,615	0.00%	\$0	\$77,615	\$77,615					
Jul-07	\$83,437	0.00%	\$0	\$83,437	\$83,437					
Jul-08	\$86,774	0.00%	\$0	\$86,774	\$86,774	\$78,553	\$78,553	\$0	0.00%	-\$8,221
Jul-09	\$90,462	0.00%	\$0	\$90,462	\$90,462	\$82,609	\$82,609	\$0	0.00%	-\$7,853
Jul-10	\$90,462	0.00%	\$0	\$90,462	\$90,462	\$86,891	\$86,891	\$0	0.00%	-\$3,571
Jul-11	\$90,462	0.00%	\$0	\$90,462	\$90,462	\$89,233	\$89,233	\$0	0.00%	-\$1,229
Jul-12	\$93,176	0.00%	\$0	\$93,176	\$93,176	\$90,462	\$90,462	\$0	0.00%	-\$2,714
Jul-13	\$95,971	0.00%	\$0	\$95,971	\$95,971	\$91,367	\$91,367	\$0	0.00%	-\$4,605
Jul-14						\$93,203	\$93,203	\$0		

Assumes Police Officer III with 25 Years Credited Service at Salary Maximum

July 2005 fully effective January 2006

July 2012 and July 2013 assume 3% increase/year

July 2006 fully effective January 2007

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney 

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

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

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

Background

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

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

Public Hearing

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

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

May 8 and 11 Worksessions

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

Issues

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

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

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

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

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

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

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

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

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

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

3. What did MCGEO and the Executive agree to?

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

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

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

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

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

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

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

4. Should Group G be added to the Bill?

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

<u>This packet contains</u>	<u>Circle</u>
Expedited Bill 18-09	1
Legislative Request Report	4
Memo from County Executive	5
Fiscal Impact Statement	6
Testimony of Joseph Adler	11
Lowman Memorandum	13
IAFF agreement excerpt	14
Staff amendment 1	18
MCGEO May 11 email message	19

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

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

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) amend the definition of regular earnings to include certain imputed compensation under the employees' retirement system; and
- (2) generally amend the law regarding the employees' retirement system.

By amending

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

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

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

28 (b) any statutory fringe benefit program sponsored by the County and
29 permitted by the Internal Revenue Code.

30 * * *

31 **Sec. 2. Expedited Effective Date.** The Council declares that this Act is
32 necessary for the immediate protection of the public interest. This Act takes effect
33 on July 1, 2009.

34 *Approved:*

35
36

Philip M. Andrews, President, County Council Date

37 *Approved:*

38

Isiah Leggett, County Executive Date

39 *This is a correct copy of Council action.*

40

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

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

- DESCRIPTION:** The requested expedited legislation provides that for retirement purposes certain employees will be treated as though they received the scheduled general wage adjustment which has been eliminated.
- PROBLEM:** The proposed legislation accomplishes the changes contained in the Memorandum of Agreement between the Montgomery County Government and the Municipal & County Government Employees Organization/United Food and Commercial Workers Union Local 1994 and the Fraternal Order of Police Montgomery County Lodge 35 that was negotiated pursuant to concession agreements for the current collective bargaining agreements.
- GOALS AND OBJECTIVES:** To implement provisions of negotiated concession agreement and pass through by treating employees in Groups A, E, F, and H as though they received scheduled general wage adjustments for retirement purposes.
- COORDINATION:** Office of Human Resources
- FISCAL IMPACT:** Office of Management and Budget
- ECONOMIC IMPACT:** See County Executive's Recommended FY10 Operating Budget
- EVALUATION:** n/a



OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

April 1, 2009

TO: Philip M. Andrews President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Expedited Bill to Amend the Employees' Retirement System

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

Attachments

IL: stc

2009 APR 1 PM 4:02
MONTGOMERY COUNTY
CLERK OF COURTS

BILL 18-09



MONTGOMERY COUNTY
COUNCIL

07 MAY -4 01:32

NAN
CC
SBF
LL
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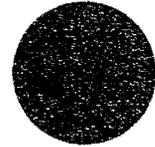
OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM 042107

May 4, 2009



TO: Phil Andrews, President, County Council
FROM: Joseph F. Beach, Director, Office of Management and Budget
SUBJECT: Expedited Bill 18-09, Personnel – Retirement – Imputed Compensation

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

LEGISLATION SUMMARY

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

FISCAL SUMMARY

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

Office of the Director

39

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

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

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

JFB:df

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

Douglas L. Rowe, FSA, MAAA, EA
Principal

MERCER



MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

120 East Baltimore Street, 20th Floor
Baltimore, MD 21202-1674
410 347 2806 Fax 410 727 3347
douglas.rowe@mercer.com
www.mercer.com

April 27, 2009

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

Confidential
Via Electronic Mail

Subject: Imputed Compensation Pension Cost

Dear Wes:

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

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

Cost Calculated From Two Viewpoints

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

Other Considerations – Legislation Only Viewpoint

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

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

MERCER



MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

Page 2
April 27, 2009
Mr. Wes Girling
Montgomery County Government

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

Other Considerations – Package Viewpoint

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

Plan Provisions

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

Estimated Costs of Proposed Changes

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

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

Numbers may not add up due to rounding.

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

MERCER



MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

Page 3
April 27, 2009
Mr. Wes Girling
Montgomery County Government

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

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

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

Numbers may not add up due to rounding.

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

Sincerely,

Douglas L. Rowe, FSA, MAAA, EA
Principal

Copy:
Aquil Ahmed, Mercer

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

g:\wp5\1\db\mgewas\imputed compensation2.doc



OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

Joseph Adler
Director

MEMORANDUM

May 5, 2009

TO: Philip Andrews, President
Montgomery County Council

FROM: Joseph Adler, Director 
Office of Human Resources

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

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

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

Bill 19-09 amends the law regarding the composition of the Board of Investment Trustees by providing that the representative selected by MCGEO, and approved by the County Executive, to the Board of Investment Trustees be designated as an *ex-officio* member. Currently, under the statute, the Directors of OMB, Finance, and OHR, and the Council Staff Director have *ex-officio* status. From MCGEO's perspective, this change would provide a measure of continuity since *ex-officio* members are not subject to a three-year term like other members of the Board of Investment Trustees.

The recently concluded bargaining agreement between the Montgomery County Government and the Montgomery County Career Fire Fighters Association, International

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

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

MEMORANDUM

DATE: May 6, 2009
TO: Management and Fiscal Policy Committee
FROM: Thomas Lowman, Bolton Partners, Inc. TL
SUBJECT: Comments on the Pension Amendment/definition of compensation

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

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

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

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

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

(46)



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

May 4, 2009

TO: Philip M. Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Memorandum of Agreement between the County and IAFF

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

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

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

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

2009 MAY -5 AM 9:05

RECEIVED
MAY 11 2009

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

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

The parties agree to amend the contract as follows:

1. *FY10 Wages*: Article 19 is amended to add a new subsection to Section 19.1
F. The 4 percent wage increase scheduled under Section 19.1 C. to be effective the first full pay period on or after July 1, 2009 shall be postponed and shall not be effective during FY10. Salary-based benefits shall not be diminished as a result of the postponement, and such benefits will be calculated as if the postponed wage increase had been received as scheduled.

2. *Personal Days*: Article 6 is amended to include a new Section 6.15
Section 6.15 Personal Leave Days
At the beginning of each leave year, each bargaining unit member assigned to a 2,496-hour work year shall be credited with 48 hours of personal leave to be used for any purpose. Each bargaining unit member assigned to a 40- or 42-hour work week shall be credited with a prorated number of hours of personal leave. The days must be used in full shifts (no partial shifts) and must be used during the leave year. All unused days are forfeited at the end of the leave year. Requests to use personal leave days will need to be scheduled and authorized in the same manner as annual leave is scheduled and approved. Personal leave benefit will be pro-rated for part-time employees. This additional personal leave will be taken and used without additional personnel costs or use of overtime to backfill for unit members on personal leave.

3. *Compensatory Leave*: Article 49 is amended include a new Section 49.4
Section 49.4 Compensatory Leave Credit
Each bargaining unit member assigned to a 2,496-hour work year and at Step O, LS1 or LS2 on the pay scale shall, on a one time basis, be credited with 72 hours of compensatory leave on their service increment date. Each bargaining unit member assigned to a 40- or 42-hour work week and at Step O, LS1 or LS2 on the pay scale in FY10 shall, on a one time basis, be credited with a prorated number of hours of compensatory leave on their service increment date. This compensatory leave must be used as leave.

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

service that is subject to forfeiture shall be placed in a sick leave donation bank to be maintained by MCCFFA for the use of employees in need of sick leave donations.”

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

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

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

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

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

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

Section 35.6 Access to Centers

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

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

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

Section 30.8 Donation of Forfeited Annual Leave

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

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

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

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

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

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

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

Staff Amendment 1

Amend lines 7-15 as follows:

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

Drummer, Bob

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

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

-----Original Message-----

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

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

Gino

----- Original Message -----

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

-----Original Message-----

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

Gino

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

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

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

Joe Adler

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Robert H. Drummer, Legislative Attorney 

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

After the publication of the action packet for Expedited Bill 18-09, Office of Human Resources Director Joseph Adler forwarded an executed Memorandum of Agreement (MOA) with the Municipal and County Government Employees Organization United Food & Commercial Workers, Local 1994 (MCGEO) modifying their previously submitted MOA. See ©1. The revised MOA adds the following sentence to resolve their dispute over the agreement on imputed compensation in Article 41.6 (See ©4-5):

The parties agree to jointly submit legislation to the County Council providing that for the purposes of retirement benefit calculation, all bargaining unit members shall be credited at the annual salary amounts as if a 4.5% cost of living adjustment had been paid in FY-2010. This means that for a RSP or GRIP participant who is on the County payroll as of June 30, 2009 and who is also on the County payroll as of June 30, 2010, the County will make a one time contribution to the participant's RSP or GRIP account on the second pay period in July 2010 of .36% of the participant's FY 2010 earnings (as defined in the RSP or GRIP). (New language underlined)

This provision would provide RSP & GRIP employees in the bargaining unit with a one time contribution to their retirement accounts of .36% of earnings. This amount represents the equivalent of the additional amount an employee in the RSP would have received in the employer's contribution for FY10 if the employee had received the postponed 4.5% general wage adjustment ($8\% \times 4.5\% = .36\%$). Unlike the imputed compensation for the ERS employees, the imputed compensation for RSP employees would be a one time contribution that would not carry over to future years. It would not affect FY10 operating funds because it would be paid in FY11. Effectively, this provision would advance money from FY11 to balance the FY10 budget.

We do not have a Fiscal Impact Statement for this amendment yet. However, since it would require the appropriation of FY11 operating funds, the legislation necessary to implement this provision can be enacted in FY10 as a new Bill separate from Bill 18-09. However, if the Committee wants to amend Bill 18-09 to implement this provision, we have drafted an amendment that would add two uncodified sections to the Bill for this one-time contribution. See the Executive Amendment at ©9.

This packet contains

Circle

Revised Memorandum of Agreement with MCGEO
Executive Amendment

1
9

F:\LAW\BILLS\0918 Personnel-Retirement-Imputed Compensation\MFP-Supplement Memo.Doc

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

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

Please use the key below when reading this regulation:

Boldface	<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:

* * *

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

* * *

ARTICLE 5 – WAGES, SALARY AND EMPLOYEE COMPENSATION

* * *

5.2 Wages

* * *

- (c) Effective the first full pay period following July 1, 2009, each unit member shall receive a 4.5 percent increase. Bargaining unit employees shall be paid a base salary pursuant to the uniform pay plan, which appears in Appendix VIIC of this agreement. This General Wage Adjustment shall be postponed and shall not be effective during fiscal year 2010.
- (d) If the County government or MCPS negotiates higher compensation improvements for any of its employee organizations during FY 2010, except for

HOC and MNCPPC, those higher increases will be matched for bargaining unit employees.

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

* * *

ARTICLE 6 – SERVICE INCREMENTS

6.1 Service Increments

* * *

- (c) Bargaining Unit employees shall continue to be eligible for regularly scheduled service increments in FY-2010 under this article.
- (d) All bargaining unit members who are at the top of their salary grade in FY-2010, shall on a one time basis, be credited with sixty (60) hours of compensatory leave on their service increment date. The employee must use the sixty hours as leave.

* * *

ARTICLE 21 – BENEFITS

* * *

21.3 Employee Benefits Committee

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

* * *

[21.4 Health Benefit Review for Calendar Years 1998-2000

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

- (a) improvements in dental, vision, and prescription benefits at same or lower costs;
- (b) unbundling of dental, health and life benefits;
- (c) Pru-Plus out of network deductible;
- (d) podiatry care;
- (e) coverage of alternative medicine; and

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

* * *

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

* * *

ARTICLE 27 – REDUCTION-IN-FORCE

* * *

27.5 Bargaining Unit Job Security

* * *

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

* * *

ARTICLE 28 – DISCIPLINARY ACTIONS

* * *

28.6 Investigative Examinations

* * *

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

28.7 Rights of Union Representative During Investigative Examinations

* * *

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

* * *

ARTICLE 36 – UNION ACTIVITIES

* * *

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

* * *

ARTICLE 41 – RETIREMENT

* * *

41.3 Retirement Committee

* * *

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

* * *

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

payroll as of June 30, 2009 and who is also on the County payroll as of June 30, 2010 the County will make a one time contribution to the participant's RSP or GRIP account on the second pay period in July 2010 of 36% of the participant's FY 2010 earnings (as defined in the RSP or GRIP).

* * *

Article 41.9 Retirement Incentive Program II

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

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

- a. The County shall offer the choice of (a) a one-time lump sum payment of forty thousand dollars (\$40,000) payable from the ERS on August 1, 2009 and eligible for rollover (b) a pension benefit increased by \$3,333.33 for the first twelve months and eligible for rollover or (c) an additional retirement benefit of \$40,000 paid in the elected form of benefit to employees who are eligible for normal retirement as of June 1, 2009 and express by April 1, 2009 to the Office of Human Resources a written intention to retire on June 1, 2009;
- b. The County shall waive the early retirement reduction and offer a choice of (a) a one-time lump sum payment of \$40,000 payable from the ERS and eligible for rollover (b) a pension benefit increased by \$3,333.33 for the first twelve months and eligible for rollover or (c) an additional retirement benefit of \$40,000 paid in the elected form of benefit to employees to employees who are eligible for early retirement and within two years of meeting the criteria eligibility for normal retirement as of June 1, 2009 and express by April 1, 2009 to the Office of Human Resources a written intention to retire on June 1, 2009;
- c. Effective June 1, 2009, increase social security integration multiplier for Group E to 1.65%.

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

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

* * *

ARTICLE 55 – COST EFFICENCY STUDY GROUP

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

- (1) Evaluate the service delivery model for each agency/program/department which employ bargaining unit members;
- (2) Evaluate the supervisory/management structure in each agency/program/department which employ bargaining unit member, to include the supervisor to employee ratio;
- (3) Evaluate the technology, equipment, and tools supplied to bargaining unit members to perform their duties and responsibilities;
- (4) Evaluate the County Executive branch's operating budget to identify potential cost reductions that will not adversely impact same services;
- (5) Evaluate the cost effectiveness of current contracts with outside vendors who perform services that can otherwise be performed by bargaining unit members or via other more cost effective ways;

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

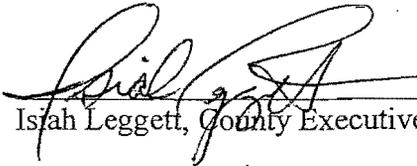
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APPENDIX VI – OPT/SLT UNITS – DEPARTMENT OF PUBLIC WORKS AND
TRANSPORTATION

* * *

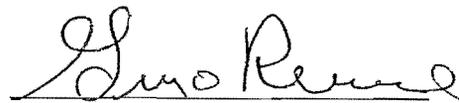
- (c) Fleet Management
- (1) Ten t-shirts to be provided to mechanics, helpers and welders.
 - (2) The parties agree to refer the issue of tools/equipment/work space available to all maintenance facilities, including highway depots, to the LMRC.
 - (3) The following item is referred to the LMRC:
- provide power lift carts
 - (4) The Heavy Equipment section of Fleet Management Services shall have the 4 day 10 hour workweek available for their shift pick selection that meets the demonstrated operational needs of the section and optimizes schedule flexibility for bargaining unit members.

FOR THE EMPLOYER


Isiah Leggett, County Executive

Date 5/12/09

FOR THE UNION


Gino Renne, President

Date 5/12/09

Executive's Amendment

Add the following language after line 30 of the Bill:

Sec. 2. Group I and Group II

Notwithstanding §33-117(a), the County must make an additional one-time contribution of .36% of the participant's fiscal year 2010 regular earnings on the second pay period in July 2010 on behalf of each Group I and Group II participant on the County payroll as of June 30, 2009 and who is also on the County payroll as of June 30, 2010,

Sec. 3. Guaranteed retirement income plan.

Notwithstanding §33-40(e), the County must make an additional one-time credit equal to .36% of the member's fiscal year 2010 regular earnings to the member's guaranteed retirement income plan account on the second pay period in July 2010 for a member who is on the County payroll as of June 30, 2009 and who is also on the County payroll as of June 30, 2010,

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney 

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

Expedited Bill 18-09, Personnel – Retirement – Imputed Compensation, sponsored by the Council President at the request of the County Executive, was introduced on April 14, 2009. A public hearing was held on May 5.

Background

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

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

Public Hearing

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

Issues

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

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

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

The costs to implement this Bill would not begin until FY11 because the plan actuary calculates the County's required contribution to the ERS with a one-year delay. The cost would be paid over time, beginning in FY11, for the number of years used to amortize the full cost. It effectively balances the FY10 budget at the expense of future budgets. Council staff asked the Council's actuary, Thomas Lowman of Bolton Partners, Inc., to review Mr. Rowe's fiscal analysis. See ©13. Mr. Lowman agreed with the analysis and also agreed that the 15-year amortization schedule is more appropriate. Mr. Lowman expressed concern over any additional burden on future liabilities of the ERS trust fund because of recent investment losses caused by the downturn in the equity markets. Mr. Lowman pointed out that the historic losses of the past year will begin to require additional employer contributions in FY11 and be fully reflected in FY15. The additional liability created by this imputed compensation would only compound the County's future problem.¹

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

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

Mr. Lowman described similar legislation before the Anne Arundel County Council that would limit the imputed compensation to the calculation of earnings for FY10 only. Under this method, a member's retirement benefit would only be increased if the member's final average earnings ("high 3 years") include FY10. Mr. Lowman projected this change to cost materially less. This would leave the decision whether this imputed compensation should be carried over to future years to future collective bargaining. **Council staff recommendation:** limit the effect of the imputed compensation to FY10 only. Staff amendment 1 at ©18 would do this.

2. Is the imputed compensation equitably distributed?

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

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

3. Should Group G be added to the Bill?

The Executive and the IAFF agreed to submit legislation to the Council providing for similar imputed compensation for members of the IAFF after Bill 18-09 was introduced. The Executive requested an amendment to this Bill adding Group G instead of a new Bill to accomplish this. The title of Bill 18-09 is broad enough to permit this amendment without re-advertisement and a new public hearing. **Council staff recommendation:** if the Committee recommends enactment, amend the Bill to add Group G. See staff amendment below:

Add the following after the new language in line 15:

Regular earnings for a Group G member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39.

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

This packet contains

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MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Expedited Bill 16-10, Personnel – Retirement – Imputed Compensation Limit

We received the Executive Branch response to Walt Bader's public hearing testimony about the intent of the parties in negotiating the imputed GWA provision in the 2009 collective bargaining agreement. See ©1. We also received a copy of an estimate of the cost to extend the imputed GWA to FY11 from an actuary retained by MCGEO. See ©2.

This packet contains:	<u>Circle #</u>
Joseph Adler Memorandum dated April 29, 2010	1
MCGEO actuary report	2



OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

Joseph Adler
Director

MEMORANDUM

April 29, 2010

TO: Duchy Trachtenberg, Chair
Management and Fiscal Policy Committee

FROM: Joseph Adler, Director 
Office of Human Resources

SUBJECT: Executive Branch Response to FOP's Interpretation of Contract
Provision Resulting in Expedited Bill 18-09

This is in reply to your oral request at the April 27 Council public hearing on Expedited Bill 16-10 for a response by the Executive Branch to the testimony of Walt Bader on behalf of the Fraternal Order of Police Lodge 35. Mr. Bader testified that the intent of the 2009 agreement between the County and the FOP was to limit the effect of the imputed 4.25% GWA to the calculation of regular earnings for FY10, and that Expedited Bill 18-09, which carried this imputed GWA into all future years, did not embody the actual intent of the parties.

It is not uncommon for parties to a collective bargaining agreement to agree to language in a contract and later disagree over the intent of that language. That is what keeps arbitrators gainfully employed. However, it is rare that a contract provision is enacted into law and one party waits for nearly a year to argue that the legislation was wrong and didn't reflect the intent of the parties.

We strongly maintain that Expedited Bill 18-09, approved by the Council on May 13, 2009, accurately embodies the agreement reached with the FOP and is consistent with the bargaining history. The contract provision was never intended to apply either just for FY10 or only to those employees who retire and whose high three years include FY10 earnings. The cost projections presented to Council last year, both the fiscal impact statement and actuarial assumptions unequivocally carry this imputed GWA into all future years. We note that Council staff agrees with the Executive Branch that the legislation enacted last year was not limited one or two years but meant to apply for future years.

We stand ready to discuss these matters in further detail at the MFP hearing on April 29.

cc: Nancy Floreen, Council President
Gino Renne, President, MCGEO, UFCW Local 1994
John Sparks, President, MCCFFA, IAFF Local 1664
Marc Zifcak, President, FOP Lodge #35
Walt Bader, FOP Lodge #35

Drummer, Bob

From: Floreen's Office, Councilmember
Sent: Thursday, April 29, 2010 11:22 AM
To: Farber, Steve; Drummer, Bob
Subject: FW: Imputed Pay Issue

-----Original Message-----

From: Gail H [mailto:gheath@mcgeo.org]
Sent: Thursday, April 29, 2010 11:20 AM
To: Floreen's Office, Councilmember; Berliner's Office, Councilmember; Elrich's Office, Councilmember; Andrew's Office, Councilmember; Trachtenberg's Office, Councilmember; Navarro's Office, Councilmember; Knapp's Office, Councilmember; Leventhal's Office, Councilmember; Ervin's Office, Councilmember
Cc: Gino Renne
Subject: FW: Imputed Pay Issue

President Floreen,

The Union has had our actuarial experts, Cheiron, conduct an analysis of the actual cost of the imputed COLA. Our experts have concluded the **actual cost** to be approximately \$544,000.00, not the \$6 million plus suggested. Attached you will find analysis of Cheiron.

President Renne will be present at today's MFP committee to answer any questions the committee may have, and he may also be reached at the office at 301-977-2447 or via his cell phone at 240-876-7701.

Gail

Gail Heath
Special Assistant to the President
UFCW Local 1994 MCGEO
600 S. Frederick Ave., Suite 200
Gaithersburg, MD 20877
301-977-2447 (office)
301-977-6752 (fax)

From: Stephen McElhaney [mailto:smcelhaney@cheiron.us]
Sent: Wednesday, April 28, 2010 2:19 PM
To: Gino Renne; WBader35@aol.com
Cc: Gene Kalwarski
Subject: RE: Imputed Pay Issue

Attached is the letter in final form with signature.

Steve McElhaney, FSA
CHEIRON
703-893-1456 x1030
804-347-7611 mobile



April 28, 2010

Mr. Gino Renne
UFCW Local 1994 MCGEO
600 S. Frederick Ave
Suite 200
Gaithersburg, MD 20877

Re: Imputed Pay Issue

Dear Gino:

You have requested our opinion on cost regarding the use of imputed pay in the calculations of benefits for certain Montgomery County employees. Our understanding of the mechanics of this issue is as follows:

- The bargaining groups have agreed that the pay increase that had been scheduled to take effect on July 1, 2009, would be postponed until July 1, 2011. The amount of this increase was 4.5% for Groups A, E, and H, and was 4.25% for Group F.
- For purposes of retirement benefit calculations, it was provided that the pay increase that would have taken into effect on July 1, 2009 would still be included for purposes of computing average compensation. These amounts are referred to as "imputed pay" for this purpose since the pay would not be actually earned during the period.

The effect upon the Plan would be to pay benefits to some retirees that will be greater than those which would have been paid in the absence of the imputed pay provision. The retirees affected are those whose three year averaging period would include any period that includes imputed pay. The period of imputed pay runs from July 1, 2009 through June 30, 2011. By the end of the fiscal year ending June 30, 2014, the final three years of pay will no longer include any imputed pay for any retiring employee. Therefore, the cost of this provision is limited to persons who retire after July 1, 2009 and before June 30, 2014.

We have estimated the cost of the additional Plan benefits using the July 1, 2009 actuarial valuation report prepared by Mercer. Numbers of retirements were derived by using the Average Age and Service tables in Section IV of the actuarial valuation report along with the assumed retirement rates shown in Section VI. The results of our calculations are as follows:



Mr. Gino Renne
April 28, 2010
Page 2 of 2

	Increase in Actuarial Accrued Liability	Increase in Annual Contribution
Group A	\$ 2,050,000	\$ 172,000
Group E	150,000	13,000
Group F	2,070,000	174,000
Group H	2,200,000	185,000
Total	\$ 6,470,000	\$ 544,000

It should be noted that these estimates are based upon using the retirement rate assumptions from the most recent actuarial valuation. To the extent that actual retirements differ from those developed from the assumptions, the financial effect will be different. The average number of expected annual retirements during the period studied are shown below:

Service	Average Annual Retirements
Group A	49
Group E	7
Group F	37
Group H	71
Total	164

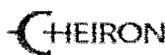
These amounts should be considered as estimates since we did not have the actual employee data from the valuation. The actual effect upon the actuarial valuation results should be computed by the Plan actuary. However, we have produced the estimate as accurately as possible using information contained in the valuation report, the actuarial methodology, and plan provisions as described in the valuation report. The undersigned actuary is a Member of the American Academy of Actuaries and meets the Qualification Standards to render the opinion expressed in this letter.

If you have any questions, please feel free to contact me.

Sincerely,
Cheiron


Stephen T. McElhaney, FSA
Consulting Actuary

cc: Walter Bader
Gene Kalwarski, FSA

CHEIRON

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