



**Fraternal Order of Police
Montgomery County Lodge 35**

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**Montgomery County Council
Management and Fiscal Policy Committee**

**Comments of FOP Lodge 35
Regarding FY 04 Collective Bargaining Agreement and MFP Items 1 and 2**

A ratified agreement is binding on the County Executive and FOP Lodge 35. **By law, the County Executive and his employees may not "directly or indirectly oppos[e] the appropriation of funds or the enactment of legislation by the county council to implement the agreement."** (Chapter 33, Article V, §33-82(a)(8).)

We continue to disagree with Council staff on the role of Council. The statute clearly defines Council's role, "Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer, and the employer shall make a good faith effort to have such term or condition implemented by Council action." *Id.* §33-80(g).

We note a technical error in MFP 2, i.e., this is a term agreement rather than a one-year reopener.

The arbitrated 2% pay increase is .8% below the CPI (and constant tax yield adjustment) and, therefore, represents a loss in real wages. It is the lowest contract wage adjustment in the County Government and Board of Education and is the result of negotiations, mediation, and many days of formal arbitration hearings. All fiscal arguments have been made and considered and we lost the arbitration. We urge full funding and implementation of all contract provisions requiring council action.

This is especially important in a year that we lost an arbitration. Moreover, last year, police management received pay increases of 9% v. 4% for the bargaining unit. For the first time in memory, lieutenants now make about 15% more than sergeants. Previously, that differential was 10%. The justification for the management increases last year was flawed and based, in part, upon erroneous information provided to Council.

Pay for the chief of police is number one in the area and State.

Montgomery County requires at least two years of college to be hired (most have four-year degrees) while most area police departments, including Fairfax County, require only high school. The cost of living in Montgomery County is high and officers are being forced out of the County they serve to live in decent, affordable housing in good neighborhoods.

Housing prices continue to rise and the median price of a new single-family house exceeds \$420,000 while maximum pay for a 21 year Police Officer III is only \$66,375. This is not much for a career employee hired 21 years ago. It does not make us number one among the comparables (a place we deserve.)

During the 1990s, police pay fell behind comparables and it took a significant adjustment to begin to correct the problem. Recruitment was adversely affected. 2% is not much, but it is crucial to our relative standing, morale, recruitment, and quality of recruits.

While the Executive assigns a budget cost to this award, it does not require any new money. Total payroll for existing employees under this award will not increase over that of the current fiscal year. We should not be asked to fund new or additional positions.

The following addresses the selected issues presented in MFP No. 2, 04/21/03.

FOP Lawsuit. We have consistently honored the bargaining process. We have accepted arbitration awards favorable to us as well as the 1991 award we lost. We continue to respect and honor the process and it is our tremendous respect for the process that mandates the appeal of the arbitration award.

The County was on fair and prior notice that we believed its Article 61 provision was illegal. That provision requires that we remain in a perpetual state of bargaining and allows the Employer to force us into issue-by-issue arbitration outside the timetable established by law. Moreover, under Article 61, the Employer has bypassed the statutory scheme of last best offer binding arbitration. In essence, the Employer has used the process to weaken the process.

We believe the County's Article 61 final offer is a permissible subject of bargaining, but not subject to binding arbitration.

The Award and lawsuit more fully explain our position. (On February 26, 2003, the Employer was informed that we were considering an appeal of the award. See E-mail to James E. Torgesen, 02/26/2003.)

This legal challenge was brought in good faith to preserve the process. While courts do favor arbitration awards, the law provides bases for judicial review and will overturn awards that are not legal. Indeed, recently the County Executive successfully challenged an arbitration award in the Court of Special Appeals. *Montgomery County, Maryland v. Fraternal Order of Police Montgomery County Lodge 35, Inc.*, No. 2339, September Term 2001, ___ Md. App. ___ (November 4, 2002). He also has gone to court to challenge decisions of our Permanent Umpire.

We will abide by the award until and unless it is overturned.

On-Call. For many years, on-call has been a voluntary assignment, however, management has abused it and done little to correct abuses that restrict off-duty officers' use of their own, uncompensated, time.

There is a significant difference between being "willing to respond when called" and being on-call. On-call entails severe restrictions upon personal time and evolved into being no different than stand-by, a provision that predates our bargaining law.

"Willingness to respond" still exists where an officer is simply called back to work. The callback provision also predates bargaining and has been in every contract since 1983.

This provision does not require Council action.

Heated Clothing. Traffic officers use motorcycles to navigate traffic and respond to calls quicker than they can in cars. They ride motors in cold weather and, even when they respond in cars, they spend many hours out of their cars in cold weather. Funding for this provision, intended to protect the health of officers and to treat them in a humane manner is minimal.

Officers Providing Personal Security. This issue does not require Council action.

Information Concerning Officer Safety. This common sense provision is intended to save an officer's life and to prevent an officer from being forced to take another's life. When we put it on the table, we expected prompt agreement and were amazed that the County Executive and police chief opposed it until the final day of arbitration. The reasons given for their opposition ranged from "it gives the implication that [Charles Moose] did something wrong " in the sniper case, to it may compromise an investigation, to it may damage a person's reputation, to it may violate federal law. This provision is about saving a life. While we are not aware of any tort liability and do not waive any rights, the value of a human life outweighs speculation over liability.

This provision does not require Council action.

Disability Retirement Offset. There is no additional cost over existing practice. The provision establishes a fair and reasonable limit on outside earnings. Moreover, the service-connected provision is identical to that in current law for Group G employees. The "cryptic clause" is intended to merely clarify prior legislation under the contract for purposes of future contract interpretation. In discussing this clause, we found that there was no disagreement. Our interest was to be up-front in a matter that had the potential for future litigation.

Automatic Vehicle Location Technology. This provision does not require Council action. It is stated, "It is not clear whether the exclusion for a subpoena from a 'State ... prosecutor" was intended to cover the County State's Attorney." Clearly, the State's Attorney for Montgomery County is a state prosecutor. The staff questions are not relevant to "an appropriation of funds or enactment, repeal or modification of a County law."