



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

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

April 28, 2003

There is only one arbitrated contract before Council this year.

Our police agreement is the result of five days of formal arbitration hearings before an experienced labor arbitrator. Extensive evidence was received and testimony taken.

In addition, the parties spend four days in mediation. Prior to mediation, we negotiated over the course of 2 ½ months. This process began on November 4, 2002; the last day of arbitration was February 8; and the process concluded on February 24 when Arbitrator Sharnoff's award was received. We are now here for funding.

Arbitration awards are based upon the "more reasonable" standard according to very specific statutory criteria.¹ Time does not allow us to re-arbitrate today.

Our members have expended tens of thousands of their dollars funding research, consultants, legal fees, transcript costs, and arbitration costs. They will incur tax increases to fund all county and state projects, a car licensing fee, and those who can afford a house will be impacted by increases in assessments.

We fully appreciate Council's, particularly this Committee's, detailed work on the budget. However, I suggest that police unit compensation for FY 04 has received more scrutiny and analysis than any other compensation issue before you. Transcripts and exhibits are far more voluminous than the materials you have been provided for all other county agency compensation issues combined.

¹ The impasse neutral may take into account **only** the following factors:

a. Past collective bargaining contracts between the parties, including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits and working conditions;

b. Comparison of wages, hours, benefits and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland;

c. Comparison of wages, hours, benefits and conditions of employment of other Montgomery County personnel;

d. Wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County;

e. The interest and welfare of the public;

f. The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer.

Our contract is the only collective bargaining agreement before you that has been fully evaluated in terms of the FY 04 fiscal situation. It is the only contract before you that provides for pay increases below the CPI. Indeed, it is .8% below CPI or 71.4% of the November 2001 – November 2002 CPI.

Pre-bargaining (pre-FY 83), in times of very high inflation, County law generally provided that employees receive minimum pay adjustments of 75% of the CPI.² This contract falls below that level. With this contract, we will be worse off next year than last.

Charter Section 305 accounts for the effect of inflation upon the County's operating budget. The law affords Councilmembers CPI increases. Police officers, like Councilmembers, are real people and not immune from erosion in spending power. The Charter grants us the right to bargain our wages and the enabling legislation provides law Housing prices are escalating far faster than the CPI.

Different laws and bargaining units are before you for funding. Each contract was entered into for different reasons. Different bargaining units have different interests and needs. In 2001, we arbitrated over the distribution of an agreed sum of money. The County wanted more at the top of the scale, we wanted more at the lower-paid end of the scale immediately with the intention of equalizing the percentages over the term of the contract. The equalization did not occur; however, after FOP Lodge 35 prevailed in that arbitration, recruitment improved. (See below.)

Significantly, Arbitrator Sharnoff wrote, "the County acknowledged during the course of the instant proceeding that the FOP's evidence which demonstrated that, in the event that the FOP's total wage proposal, including the reestablishment of the pay plan grid, were to be adopted by the Impasse Neutral, the **FOP members essentially would be in the same position in which they would have been if the County's Final Offer for a three-year agreement been adopted by Impasse Neutral Strongin in 2001.**" [See Attachment 1.]

We have been penalized for taking care of our junior members in the interest of recruitment, but that is the process and we respect it. Unfortunately, this loss can get worse if Council does not fund the little we agreed upon.

Mr. Sharnoff further found, "**Given this circumstance and without consideration of other factors, the Impasse Neutral finds the FOP's Final Offer on wages to be "reasonable" based on the history of bargaining between the Parties, comparison with Police Officers in other jurisdictions and comparison with other County employees.**"

Further, "Thus, while the FOP's Final Offer on wages would be found the more 'reasonable' but for considerations of ability to pay, those considerations of ability to pay, this year, are found to cause the balance to swing in favor of the County's proposal."

² Chapter 33, Section 33-74, Mont. Co. Code.

As to other contracts, Mr. Sharnoff noted, "Although the other represented County employees will be obtaining proportionally higher percentage general wage adjustments, this is as a result of the increase for the third year of three year agreements negotiated at the time that the Parties herein agreed on a two-year agreement."

We have already taken a cut due to the FY 04 fiscal situation. It would be patently unfair to subject police officers to two cuts for the sake of equity with other employees who face only one cut. Equity would require that the **FOP final offer** (not the award) be pro rata reduced if any reduction were to occur.

All we seek is funding for this award and enactment of the agreed legislative changes.

Equity. Equity is a myth. Bargaining unit members do not receive reclassifications other employees get as hidden pay increases. Last year, Council increased pay for lieutenants and captains by an additional 5%, putting lieutenants 15% above sergeants for the first time in memory. Previously that differential was 10%.

Arbitrator Sharnoff commented on this inequity. "As noted, the most glaring lack of comparability in terms of wage adjustments is with respect to the higher level positions in the Police Department above those in the Union given the current budgetary circumstances."

The following chart shows pay comparisons of management v. the unit.

	Lt. & Capt	Unit
Jul-01	\$ 4,000	\$ 2,800
Jan-02	0	\$ 600
Jul-02	4%	3% + \$121
Jan-03	5%	1%
Total	\$4000 + 9%	\$3521 + 4%
Totals are not compounded.		

And, disability protection for police officers is very important, but under this contract, unit police officers will be eligible for reduced disability pay. Management is not affected.

Cost. The County budgets our contracted pay increase at \$2,525,090, but this includes management pass-through. We got no pass-through in FY 2002 or in FY 2003. At arbitration, the County said the difference between 3.5% and 2%, for the unit, was \$1.1 million. If true, the County's "cost" for the unit would be \$1.47 M.

There is a difference between budgets and REAL money. Historically, the budgeted cost of pay increases has not been the true cost. Moreover, with attrition in FY 03, the bargaining unit payroll for existing members will be about \$1,153,627 less in FY 04. The total cost of pay under our award is -\$1.15 M as shown below.³

Cost of County Pay Proposal for FY2004

[1]	Cost of unit under current pay system	\$56,210,906
[2]	Cost of 2% pay proposal	\$1,124,218
[3]	Assumed cost of increments net of turnover and lapse	\$0
[4]	Savings from retirements	(\$2,389,566)
[5]	Promotions to replace retirees	\$111,721
[6]	Total	(\$1,153,627)
[7]	Roll-up of 34%	(\$392,233)
[8]	Total cost of County pay proposal	(\$1,545,860)
[9]	Police Department 2003 budget	\$142,450,370
[10]	Proposal as percent of budget	-1.085%
[11]	Projected County revenues, FY 2004	\$2,562,200,000
[12]	Proposal as percent of revenues	-0.060%

- [1] Cost of salary plus longevity for 1018 unit members, excluding Feb 1 DRSP retirees.
- [2] 2% of [1]
- [3] Assumption based on past County experience in which increments have no net cost.
- [4] Savings from 36 retirements not included in [1] above.
- [5] Maximum cost to replace DRSP retirees (7 sergeants, 6 MPO retirees and 7 MPO promotions to sergeant).
- [6] [2] + [3] + [4] + [5]
- [7] 34% of [6]
- [8] [6] + [7]
- [9] Source: FY2003 County budget.
- [10] [8] as a percent of [9]
- [11] Source: County financial presentation to FOP November 2002.
- [12] [8] as percent of [11]

³ This is a snapshot based on February 2003 data.

The following chart is based upon Group F retirement census data for all Group F employees enrolled on July 1.

	<i>Jul-02</i>	<i>Jul-00</i>	<i>% Increase Jul 00- Jul 02</i>
Sum	61,921,088.00	55,198,158.00	12.18%
Avg	57,228.36	53,538.47	6.89%
Mean	54,833.00	51,188.00	7.12%
Max	126,182.00	124,515.00	1.34%
Count	1,082	1,031	4.95%
NOTES: July 02 Includes \$21.00 or \$121.00 pay adjustment of July 1, 2002 - -- NOT July 2002 3% [4% mgt]Gen Wage Adj. July 00 Does NOT include July 00 General Wage Adjustment Includes All Group F Pay - Including Mgt. (Except Police Chief) % Increase 02 over 00 INCLUDES Increments and Promotions			

Hence, with increments and FY 01 and FY 02 pay increases, average pay increased by only 7.12%.

[MFP #1 of April 21 says that if unrepresented employees receive 2% pay increases, rather than the 3.75% pass-through, there is a "savings" of \$2.5 M.]

Incumbent officers should not be asked to subsidize additional officers through pay reductions. This is a community burden. If a savings is needed, future hiring can be delayed, for it is far better to have less content officers than more dissatisfied, under-compensated officers. We already have poor, inadequate, and insufficient equipment because of under-funding of additional cars and equipment for additional officers.

Council Options. Your police officers who, just months ago were community heroes during the sniper terror, are now facing the lowest pay increase under any contract. Our members are disappointed but support the award in the spirit of the law.

We have honored the process and ask that Council keep faith with us.

The law provides only two options:

1. That Council indicate by resolution its intention to appropriate funds for or otherwise (legislation) implement the agreement;
2. Or indicate its intention not to do so, and state its reasons for any intent to reject any part of the agreement.

The other proposed option (#3) is *ultra vires*, destructive to the process, and unprecedented. As stated *supra*, there is no way that a second fiscal review, or cut, can be equitable. The FOP final offer was more reasonable "but for" the current fiscal situation.

The law was written to require council review of the police contract as a separate issue. "Option 3" would require that we forfeit further bargaining and impasse as required by law, and dishonors the process we have so diligently honored for over 20 years.

I disagree with staff about the timelines set forth in law. The 1982 County Council was well aware of the budget process and the political implications of its actions. In an attempt to create an atmosphere of good faith, and to keep contract effective dates on schedule, the prior Council created a fair process.⁴ "Option 3" is more political than legal or practical. I suggest that if we had a 2% arbitration award and there was no question about other funding, no one would be seeking equality on our behalf.

Equality does not exist within our own pay scale because of the unadjusted flat dollar increase three fiscal years ago; it does not exist *vis a vis* our own police management; it does not exist in comparison to the pay of other units. I avoid making comparisons, but they certainly exist. Any attempt to make equal percentage reductions (or implementation delays) is inequitable in the context of the skewed pay chart we are working with long beyond our stated intentions and two arbitrators' findings.

Clearly, we do not want to continue bargaining, but that is our only option if a below-CPI agreement is not going to be funded.

The automatic reduction contemplated by the PLRA comes only after the extended bargaining process is completed. Moreover, the reopener clause of our contract was never intended as a substitute for this statutory process under these circumstances. A reopener process likely would not be completed before November negotiations. Police officers charged with enforcement of the law are frustrated enough and do not deserve violations of their bargaining laws.

We support full funding of all negotiated contracts. We urge you to fully fund this **arbitrated** agreement – the only arbitrated agreement before Council this year.

We do not desire to be placed in a political tug of war with other unions and there is no reason we should. We are here in a different posture – Arbitrator Sharnoff has cut our reasonable pay offer of 3.5% and pay scale realignment to a level well below CPI. A second cut would not be equitable.

Attachments 2 and 3 demonstrate where we would be relative to other employees, "*but for*" fiscal considerations. Through the arbitration process, we have been reduced from 6.8% to 2%.

[Top pay for a 20-year police officer is only \$67,042. This award would increase that to only \$68,383.]

⁴ In some jurisdictions, and private industry, employees work without contracts or under contract extensions. The 1982 Council specifically sought to avoid this.

Increments. Increments are not general wage increases, rather are compensation for experience. Except for the few in the negotiated lateral entry program, unlike many other County employees (and the police chief), our members start at the entry-level and work their way to the top over 20 years. When increments are not adjusted for inflation, there is a further reduction in real wages.

Importantly, about 300 unit members will not receive increments in FY 04. Many of these are the ones who accepted less over the past two years to adjust for entry-level wage increases. Possibly, more senior officers will leave if there is a reduction from this award because there exists no incentive to stay for higher Average Final Earnings if they are at, or near, maximum allowable service. (22 veteran unit officers will be maxed out in FY 04.)

Recruitment. While the police department understandably wants to put the best face on its recruitment efforts, the fact remains that several candidates have failed out from the current class and resigned. Further, attrition of recruits is increasing, after a pattern of decline.

The following shows the pattern of attrition. Our 2001 arbitration award has greatly assisted recruitment. (It is noted that four of the eight who left in 2001 did so before the July 2001 flat dollar pay increase.)

Year Hired Jan-Dec ¹	Hired	Resigned or Left	Percentage who Left	Left w/l 1 Year
2000	34	7	20.6%	4
2001	52	8	15.4%	7
2002	129	14	10.9%	13
2003	50	6	12.0%	6
Total	265	35	13.2%	30

¹ 2003 -- Jan 1 to April 25 (Feb 03 Class Still In Session)

Other Issues

On-Call. Previously, I responded to questions raised by Councilmembers Praisner and Andrews in regard to on-call. While staff maintains it may require an appropriation of funds, this involves uncompensated work performed by police officers and is a working condition. [Attachment 4.]

AVL. The Contract is the mutual product of the parties' interpretation of State Law. It does not attempt to implement any law. Further, it provides for a process in the event that interpretation should be challenged. The County has been involved in MPIA and former County Charter public information challenges, as well as other court litigation. This is the normal function of the County Attorney and should require no appropriation. Clearly, we are not asking Council to amend State Law.

Disability Offset. Currently, by practice, there is no offset. We propose no offset for service-connected disabilities and 20% over maximum pay for the occupational class from which retired for non-service-connected disability. This is less costly than current practice.

Disability Retirement. As stated before, this is current law. Our intent was to avoid future controversy. Nothing more.

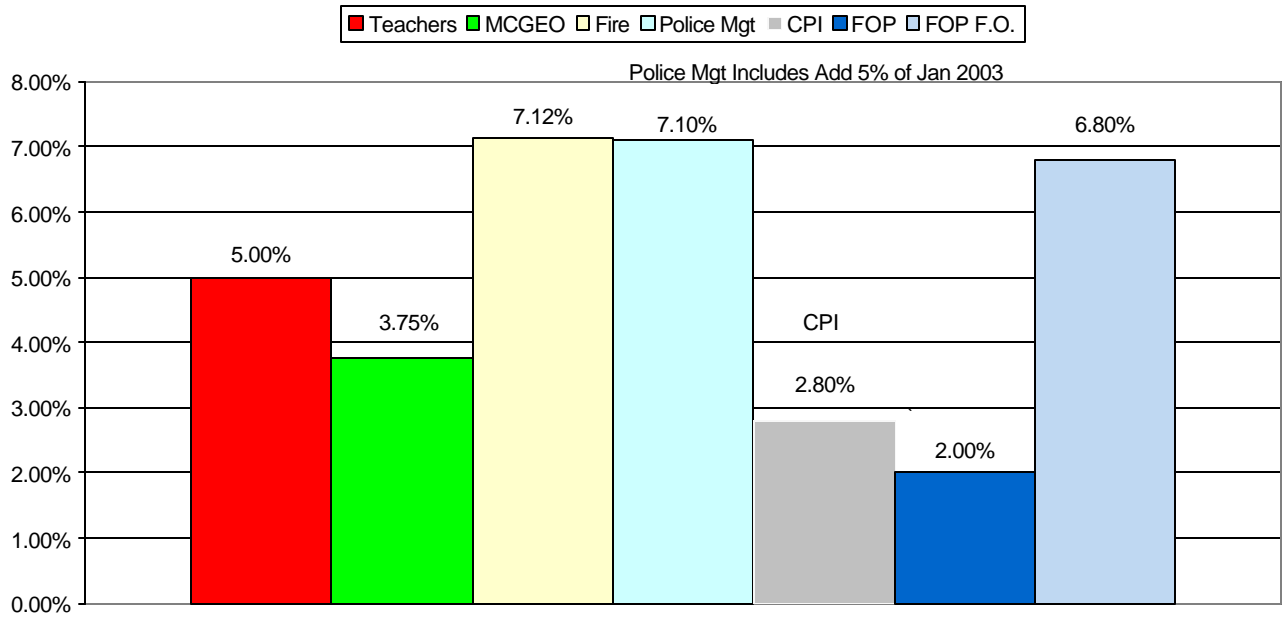
Again, we urge full funding and implementation of this agreement. In the final analysis, the County and taxpayers are fortunate that no matter what happens **within the process**, our members, your police officers, will respond to calls and continue to risk their lives every minute of each day in service to their community. Ours commitment is moral, not political.



Walter E. Bader
President

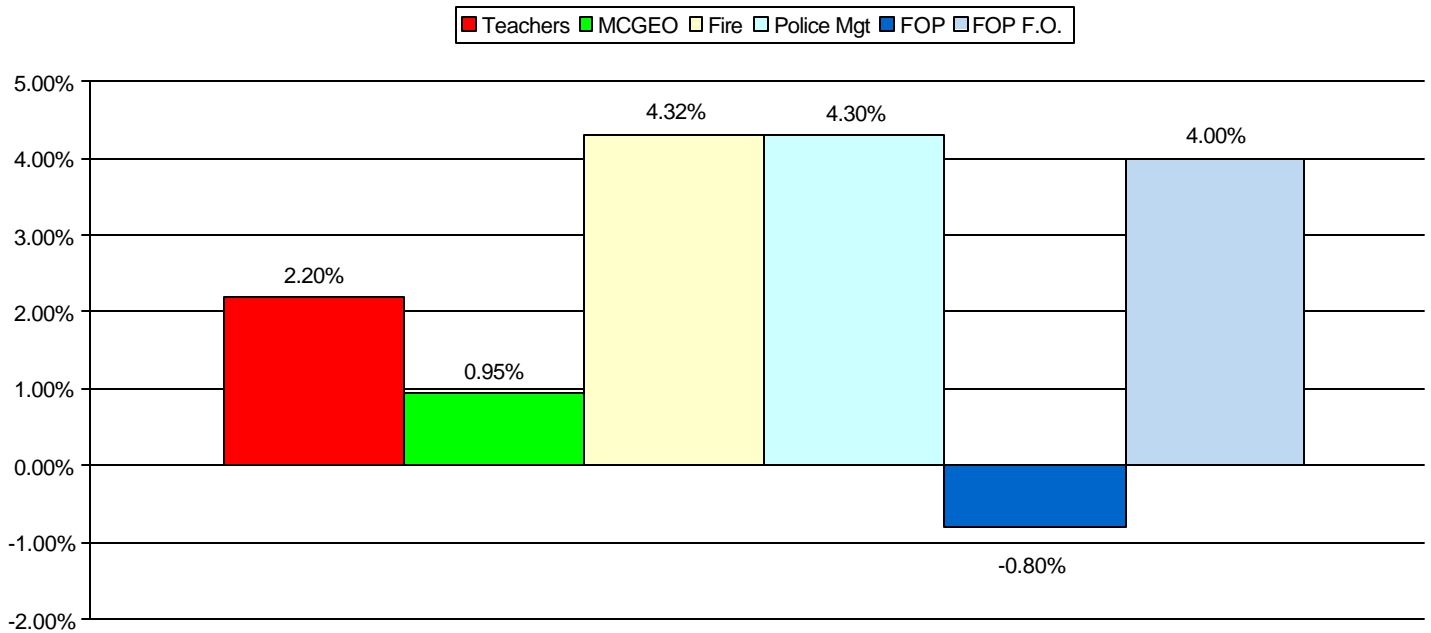
April 27, 2003

Pay Increases FY 04



Attachment 1

Contracts Adjusted For CPI (2.8%)



Attachment 2

Attachment 3 - chart

Attachment 4 – See April 21, 2003 Council MFP