

**BEFORE THE PERMANENT UMPIRE FOR THE  
MONTGOMERY COUNTY POLICE LABOR RELATIONS LAW**

In the Matter of:

MONTGOMERY COUNTY, MARYLAND

Respondent

and

FRATERNAL ORDER OF POLICE,  
MONTGOMERY COUNTY LODGE NO. 35

Charging Party

Case No. 2011-01

Date of Filing: March 15, 2011

FY 2012 Budget Submission

Before the Permanent Umpire: Ira F. Jaffe, Esq.

APPEARANCES:

For the FOP:

Margo Pave, Esq.  
(Zwerdling, Paul, Kahn & Wolly, P.C.)  
William J. Chen, Jr., Esq.  
(Chen & McCabe, LLP)

For the County:

Bernadette Lamson, Esq.  
(Associate County Attorney)

**DECISION AND ORDER**

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## **SUMMARY AND OVERVIEW**

This case involves a Prohibited Practice charge filed with the Permanent Umpire under the provisions of the Police Labor Relations Act (“PLRA”), Article X, Montgomery County Code, Section 33-75, et seq. Specifically, the Fraternal Order of Police alleged that the County Executive violated Sections 33-80(g) and 33-82(a)(8) of the PLRA by submitting to the County Council a FY 2012 Proposed Budget that did not include funding needed to implement the 2011 Agreement and the FY 2012 Interest Arbitration Award. The FY 2012 Proposed Budget, if adopted without change by the County Council, would result in significant increases in health insurance and dental insurance premiums, reductions in prescription drug benefits, and substantial increases in employee retirement contributions, all contrary to the terms of the 2011 Agreement. The FY 2012 Proposed Budget also includes no funding to implement the step increase provided for by the FY 2012 Interest Arbitration Award.

This violates the County Executive’s obligations under the PLRA to include in the Proposed Budget funds sufficient to fund the Agreement to which it agreed with the FOP. The County Executive’s argument that he is not bound by the law and that Section 303 of the Montgomery County Charter sanctioned his conduct is rejected. Section 303 of the Charter requires that the proposed Budget include those items that are “prescribed by law.” The PLRA is such a law and has contained similar provisions since 1982. Section 510 of the County Charter, which was adopted by the electorate after Section 303, further supports the legality of the PLRA.

The County Executive’s arguments in this case were grounded upon its position that he retained unreviewable discretion to propose or not to propose to fund the Agreements which he had negotiated and had agreed to be bound. The arguments were independent of the particular economic circumstances present at any given point in time and applied with equal vigor in good and in bad times.

The claimed ability to eliminate funding for selected provisions of collective bargaining agreements is barred by the PLRA and undermines collective bargaining. Unless the provisions of collective bargaining agreements are binding equally on both Parties – the County Executive and the Union – incentives to bargain hard on the part of the County Executive are reduced. It is inconsistent with the PLRA and the public interest in collective bargaining to allow the County Executive to first bargain and reach agreement over wages, benefits, and other terms and conditions of employment, and then allow the County Executive to try to undermine the implementation of that collective bargaining agreement by not recommending that the agreement he reached be sufficiently funded.

The PLRA contains an integrated procedure for protecting public revenues against use to implement collective bargaining agreements whose provisions are deemed inappropriate. The PLRA provides for the County Council to review funding necessary to implement collective bargaining agreements. The County Executive’s actions in this case interfere with the legally prescribed processes for reviewing funding for collective

bargaining agreements and improperly usurp a role that the PLRA has assigned to the County Council.

The requirement to propose funding to implement an interest arbitration award is similarly clear. The outcome of the interest arbitration process is an award that represents the agreement of the Parties with respect to the matters at impasse. Again, the County Council, not the County Executive, is the entity responsible for reviewing the award and determining whether or to what extent it should be funded and implemented.

The claim of the County Executive that his actions are immune from review is rejected. The County Executive must abide by the law. The case law addressing immunity granted to legislators has no application to this case. This case involves the decision of the County Executive to refuse to honor the provisions of a valid County law and to comply with the clear language of the County Charter, not an attempt to look behind or create liability for a legislative act or for the exercise of speech and debate.

The claims that the County Executive violated the duty to bargain provisions of the PLRA by unilaterally changing the terms and conditions of employment are rejected and those aspects of the Charge are dismissed. The proposal not to fund certain provisions of an existing collective bargaining agreement is not the same thing as unilaterally changing the benefits to which employees are entitled. The County Executive's actions do not alter the fact that the ultimate decision with regard to funding still rests with the County Council. Despite the improperly proposed Budget submission, the County Executive continues currently to honor the terms of the existing collective bargaining agreement in its entirety, including the provisions regarding health insurance, dental insurance, retirement, life insurance, and prescription drug coverage, and had not stated that it will not continue to do so after July 1, 2011, to the extent that they are funded in the finally adopted FY 2012 Budget.

The County Executive was directed to cease and desist from the violations of the PLRA by submitting forthwith an amended FY 2012 Proposed Budget to the County Council that contained funding sufficient to fully implement the 2011 Agreement and the FY 2012 Interest Arbitration Award. Thereafter, the County Council can perform its role with respect to review of both the Agreement and the Award when determining whether or to what extent to fund those obligations.

Nothing in this Decision and Order purports to restrict the discretion of the County Council to engage in the review provided for by the PLRA and to adopt a final Budget that funds, in whole or in part, or declines to fund, in whole or in part, the 2011 Agreement and the FY 2012 Interest Arbitration Award.

## **DECISION**

### **Procedural Background**

On March 15, 2011, the Fraternal Order of Police, Montgomery County Lodge 35 (“FOP”) filed a Prohibited Practice charge alleging that the County Executive, the Honorable Isiah Leggett, violated the Police Labor Relations Act (“Act” or “PLRA”) Section 33-75, et seq., Article X, Montgomery County Code, by failing to include in his FY 2012 Proposed Budget Submission to the Montgomery County Council (“County Council” or “Council”) proposed funding necessary to implement a number of provisions of the collective bargaining agreement between the County and the FOP (“FOP Agreement”) for FY 2012, both as initially bargained in June 2010, and as affected by a February 18, 2011 Interest Arbitration Award issued by Arbitrator Jerome Barrett (“FY 2012 Award”).

The County admits that the County Executive’s FY 2012 Proposed Budget Submission to the County Council (“FY 2012 Proposed Budget”) did not provide full funding in the amounts necessary to fully implement the FOP Agreement and further admits that this violation was deliberate. The County Executive further recognizes that this action violates the letter and spirit of the Act. The County Executive defends his actions on the following grounds: 1) his assertion that the submission of a Proposed Budget to the Council is a “quasi-legislative act” and, as such, the County Executive is entitled to immunity from even being required to answer the Charge; and 2) his assertion that he retained the discretion under Section 303 of the Montgomery County Charter to determine the content of the proposed Budget without regard to any restrictions contained in the PLRA.

Following several telephone conferences between the Parties and the Permanent Umpire, it was determined that there were no material facts in dispute. A hearing was held on April 13, 2011, for the principal purposes of clarifying certain facts and for the purposes of entertaining additional argument.

The County filed an Answer to the Charge and a Memorandum in support of its position on April 1, 2011. The Union filed a Response to the Answer accompanied by a Memorandum on April 8, 2011. The County filed a Reply Memorandum on April 11, 2011, at which time its immunity defense was first asserted. A transcript of the April 13, 2011 hearing was prepared. Finally, the Parties each submitted additional Memoranda on April 18, 2011. All of these filings and all exhibits have been carefully reviewed as part of the decisional process.

#### The Role of the Permanent Umpire

The Permanent Umpire is an office created by Section 33-77 of the PLRA. The Permanent Umpire is appointed by the County Executive, with the concurrence of the Union, and is confirmed by the County Council. The Permanent Umpire serves a fixed five-year term. The Permanent Umpire must be a person with experience as a neutral in the field of labor relations and must not serve or be viewed as a representative of the interests of either the County or the Union.

The role is quasi-judicial in nature. The Permanent Umpire is authorized to investigate and adjudicate Prohibited Practice Charges alleging that the PLRA has been violated.

Under Maryland law, when a claim is made in the context of an administrative proceeding that constitutional requirements have been violated, the administrative agency

is required to consider and adjudicate those claims. Failure to do so is deemed harmful error. See, e.g., Prince George's County, Maryland v. Ray's Used Cars, 398 Md. 632, 650-51 (2007).

Accordingly, the initial task of the Permanent Umpire in this proceeding is to determine whether, and if so in what respects, the County Executive's actions violated the PLRA. If the Prohibited Practice Charge is found to have merit, then the Permanent Umpire must also address the County's arguments that the PLRA conflicts with the Charter and the Maryland Constitution and that the County Executive is cloaked with immunity from being held responsible for the Charge must also be decided. If any PLRA provisions are found to have been violated and to be enforceable, then an appropriate remedy must also be determined.

#### The Actions that Led to the Filing of the Charge

On March 15, 2011, the County Executive submitted his Proposed FY 2012 Budget to the County Council. That submission did not fund a number of provisions that were included in the June 2010 Agreement that the County and the FOP reached.

That Agreement (which was effective July 1, 2010 and is referred to, therefore, as the 2011 Agreement) was for a term of two years and provided for a limited reopener for: a) cash compensation only for FY 2012; and b) the potential that, as part of the FY 2012 reopener, either party could propose a reopener on cash compensation for FY 2013 with a concomitant extension of the 2011 Agreement for a third year. The Union asserted that the 2011 Agreement included a number of concessionary items, including eliminating a 4.25% wage increase previously negotiated and eliminating tuition reimbursement benefits for FY 2011 and limiting those benefits in FY 2012. The continuation of the

status quo for the health, dental, and prescription drug programs, and the retirement program for the life of the 2011 Agreement also was part of that bargain.

The County Executive opted not to fund a number of provisions that were part of the 2011 Agreement. These were required to be continued (subject to potential non-funding by the Council) in FY 2012. Nor did the County propose to change any of these items in the interest arbitration held before Arbitrator Barrett. In fact, the County Executive chose not to notify the Union or bargain in good faith regarding its proposal reflected in the FY 2012 Proposed Budget to affect a number of changes to those provisions.

Specifically, the FY 2012 Proposed Budget, if adopted without change by the Council, would result in a number of changes in wages and benefits from the provisions of the 2011 FOP Agreement, including the following:

1) changes to the health, prescription drug, and dental insurance program for active employees, consisting of the following:

a) Article 24 of the FOP Agreement provides for an 80% (County)/20% (Employee) sharing of contributions for the particular health plan option selected by the employee; the FY 2012 Proposed Budget would change this to 70% (County)/30% (Employee);

b) the FY 2012 Proposed Budget would also impose a Salary-based premium, which is not included anywhere in the FOP Agreement; the additional premium (which would apply to part-time and full-time employees who are enrolled in a health and/or prescription drug plan) would entail additional employee premium payments over and above the 30% increased employee share; employees whose annualized base salary is

over \$50,000 and under \$90,000 would be forced to pay an additional \$35.00 per pay period – a sum equal to \$910.00 per year; employees whose annualized base salary is over \$90,000 would be forced to pay an additional \$60.00 per pay period – a sum equal to \$1560 per year;

c) additional unilateral changes would be made to the prescription drug plan reducing the prior level of benefits, including changes in copayments, elimination of “lifestyle” drugs (i.e., those used to treat erectile dysfunction), and mandatory generic drug usage; and

d) increases in the share of Dental Insurance premiums to 30% - a change from the provisions of Article 24 (20%);

2) changes to the retirement program for active employees, consisting of the following:

a) increasing by 2% of covered compensation the required contributions of employees to the Employees’ Retirement System (“ERS”); at the hearing in this matter, the County stated that the present level of contributions by bargaining unit employees was 4.75% of covered compensation until one reached the Social Security base and 8.5% of covered compensation thereafter; the changes will increase employee contribution rates, therefore, to 6.75% and 10.5% of covered compensation respectively; and

b) reducing the contributions made by the County to the ERS by 2% of covered compensation; and

3) changes to Life Insurance program, consisting of the following:

a) basic benefits (i.e., other than line of duty benefits) would be capped at 1 times salary – a 50% reduction from the present level of 2 times salary provided for under the Agreement.

Additionally, the proposed FY 2012 Budget did not include any funding for the salary provisions of the FY 2012 Award of Arbitrator Barrett. Specifically, the provisions of the FY 2012 Award adopted the last offer of the FOP. The Award included no provisions for any general wage increase, but included the following provisions relative to Service Increments:

Article 28 Service Increments

Add a new section to Article 28:

Section I. FY 12 Increment and Longevity Step Increases. For FY 12 only, qualified unit members shall continue to defer one (1) 3.5% step. Qualified unit members shall receive one (1) 3.5% step on their service increment date. Increment and Longevity steps will not be paid if not funded by the County Council.

The FY 2012 Proposed Budget contains no funding for any Service Increments or Longevity Steps.

While the goal is to obviously save money and the Permanent Umpire may take notice of the fiscal difficulties currently facing the County and many other public and private employers, the issue in this case is not one of permissible behavior in response to fiscal emergency. The County Executive's position regarding the alleged invalidity of the PLRA provisions in question is the same whether times are difficult financially or whether ample resources were available to fund those contractual commitments. Further, under the PLRA, there remains the review by the County Council and the possibility of non-funding of some or all of the provisions of the Agreement for FY 2012. Thus, this is not a case where the actions of the County Executive may be justified as necessary to

avert some financial disaster on the part of the County. The County Council retains the right to adopt, reject, add to or cut various items from the proposed Budget submission when arriving at the final adopted Budget.

The County Executive's Actions in Connection with the FY 2012 Proposed Budget Submission Violated the PLRA

The PLRA contains a detailed, integrated structure with respect to how collective bargaining of new contracts is to proceed, how impasses are to be resolved, and the respective roles of the County Executive and the County Council with respect to funding issues related to collective bargaining agreements and interest arbitration awards.

The Declaration of Policy section of the PLRA, Section 33-75, recognizes that it is the public policy of the County, pursuant to Charter Section 510, which was enacted as a result of citizen initiative, to promote the harmonious, peaceful, and cooperative relationship between the County and its police employees; that unresolved disputes are injurious to the public and to police employees as well; and that adequate means must be provided for preventing such unresolved disputes and for resolving them when they occur. To implement that policy, the PLRA states that it is in the public interest to provide for mandatory good faith collective bargaining with respect to changes to wages, hours, and other terms and conditions of employment. The remaining provisions of the PLRA were designed to implement that public policy and the provisions of Section 510 of the Charter.

The County Executive and the Union are required to negotiate in good faith with respect to wages, hours, and other terms and conditions of employment. Section 33-80(a), PLRA. Collective bargaining agreements cannot be less than one year in duration nor longer than three years. Section 33-80(e), PLRA. If an agreement is not voluntarily

reached, then the PLRA provides for an interest arbitration process to determine the disputed terms. Section 33-81, PLRA. Strikes are prohibited. Section 33-84, PLRA. Impasses over reopeners must also be handled by interest arbitration. Section 33-81(c), PLRA. Once a ratified agreement has been reached, the PLRA recognizes that it is “binding on the employer and the certified representative.” Section 33-80(g), PLRA.

Although agreements reached through bargaining and/or the impasse procedures are binding on the parties, the PLRA recognizes the requirement that any collective bargaining agreement provision that needs to be funded must be conditional upon the Council annually appropriating sufficient funds to implement those provisions. Further, this condition is to be done annually for “wage and benefit adjustments” each year of multi-year collective bargaining agreements. Sections 33-80(i) and 33-80(j), PLRA.

The PLRA contains explicit provisions for how this Council Review is to occur. Prior to the Council engaging in its review, under the PLRA and the Charter, the PLRA requires certain actions by the County Executive. Although the Parties dispute whether these functions are more properly labeled as executive, legislative, or quasi-legislative in nature, there is no dispute that the PLRA mandates that the County Executive: 1) describe in his proposed annual operating budget any collective bargaining agreement or amendment that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement (Section 33-80(g), PLRA); 2) submit to the Council by April 1<sup>st</sup>, unless extenuating circumstances required a later date, all proposed legislation and regulations necessary to implement the collective bargaining agreement with respect to any term or condition of a collective bargaining agreement that requires an appropriation of funds or enactment, repeal or modification of a County law (*id.*); and

3) make a good faith effort to have those terms and conditions implemented by Council Action (id.). Section 33-82(a)(8) of the PLRA, defining Prohibited Practices, precludes the County Executive from “[d]irectly or indirectly opposing the appropriation of funds or the enactment of legislation by the county council to implement an agreement reached between the employer and the certified representative pursuant to this article.”

Section 33-83 of the PLRA, Expression of views, provides, however, that: “[t]he expression of views, argument or opinion, or the dissemination thereof, whether orally, in writing or otherwise, shall not constitute or be evidence of a prohibited practice under any provisions of this law . . . if such expression or dissemination contains no threat of reprisal or promise of benefit.”

The PLRA anticipates, as noted, County Council review of the required budget items requesting funding sufficient to implement the collective bargaining agreement. Pursuant to Section 33-80(h), the Council must indicate by resolution its intention to appropriate funds for or otherwise implement the collective bargaining agreement or its intention not to do so. The Council also is to include a statement of its reasons for any intent to reject any part of the collective bargaining agreement. If a rejection takes place, then the PLRA provides for additional negotiations – this time involving the County Executive, the Union, and a representative of the Council to present its views. If an agreement is negotiated that is acceptable to the Council, it is to be implemented. Either the County or the Union is authorized to initiate expedited impasse procedures with respect to any impasse reached in the supplemental post-Council review bargaining.

The Council thereafter is to review the outcome of any such supplemental impasse procedure in the same manner (albeit on a different time line) as its review of the original agreement or interest arbitration award. Section 33-80(h), PLRA.

The County Executive's actions in this case have effectively gutted the collective bargaining process mandated by the PLRA. The PLRA contemplates that agreements reached through collective bargaining will be binding on both parties – i.e., on the Union and on the County Executive – and that the role of preventing use of public revenues to fund provisions of an agreement that is found not to represent an appropriate allocation and expenditure of County resources rests with the County Executive. Accordingly, the County Executive must faithfully bargain in good faith wages, benefits, and other terms and conditions of employment that are believed by the County Executive to be appropriate at the time that the negotiations are concluded. Then, the County Council through its review process and the post-review negotiation and impasse procedures reviews the executed collective bargaining agreements and interest arbitration awards at the time that they must be funded, to determine if they are deemed appropriate and worthy of funding. The actions of the County Executive in this case are tantamount to a partial usurpation of the Council's Review process and render collective bargaining agreements reached in good faith negotiations through a give and take process no longer being binding upon the County Executive to the extent any funding is required to implement those provisions.

The County Executive enjoys significant discretion in the creation and submission of a proposed Budget to the County Council that is responsible and appropriately reflects his judgment as to how to best allocate the fixed resources available. The provisions of

Section 303 of the Charter, however, are clear. The County Executive is required to include in the budget “recommended expenditures and revenue sources for the ensuing fiscal year and any other information in such form and detail . . . as may be prescribed by law.” The PLRA is one such law. I am unpersuaded that the County Executive can claim a quasi-legislative immunity to violate the legislative mandate set by the County Council. The County Council is recognized in Charter Section 101 to hold all legislative powers which may be exercised by Montgomery County. The exercise of authority to prepare and submit a proposed Budget pursuant to Section 303 of the Charter is restricted by a requirement that the budget submission contain such information as may be prescribed by law. The PLRA is not just any law, although that would be sufficient for purposes of Section 303; it is legislation that is expressly authorized by Section 510 of the Charter – a specific provision that was enacted after Section 303.

The County Executive’s position that Charter Section 303 grants unlimited discretion as to what to include or not to include in the proposed Budget other than the requirement that the proposed Budget be consistent with the six-year programs described in Section 302 of the Charter is unpersuasive. No authority for that construction was cited. [There was one such ruling by another Labor Relations Administrator in 2009, but that ruling was vacated upon the Joint Motion of the parties.] Moreover, the County Executive’s position fails to accord meaning to the “and as may be prescribed by law” language in Section 303 which, on its face, includes the PLRA. An interpretation that results in a long-standing law that is also supported by an independent section of the Charter remaining enforceable is to be favored over one that would suddenly reject 30 years of history and invalidate that law.

The County Executive's attempt to assert that the PLRA is binding upon it only in his capacity as the Executive Branch, but not in his quasi-legislative role of proposer of the Budget or other legislation is facially inconsistent with not only Section 303, but would render the PLRA good faith bargaining process and impasse procedures largely illusory. The County Executive acknowledges that this claim is not one that is limited to dire financial periods. The asserted authority is equally applicable in more robust economic times when the County has ample monies to both fund fully its collective bargaining agreement commitments and also satisfy other important commitments and efforts. The County Executive's position in this case, in essence, is that he enjoys the freedom to reach agreement upon a collective bargaining agreement, wearing one hat, and then abrogate selected portions of that contractual commitment (which usually is the product of substantial give and take) without prior notice and without affecting the remaining contractual terms through the mechanism of declining to propose funding for any commitments with which it disagrees at the time that the budget is submitted. Such selective enforcement of the terms of a binding contract is antithetical to the concept of collective bargaining set forth in the PLRA. The PLRA's preference for mutual determination through good faith collective bargaining is reinforced by the fact that, if the County Council declines to fund certain contractual provisions, the entire Agreement is returned for appropriate follow-up bargaining and access is even allowed to a supplemental interest arbitration process in the event of an impasse in those negotiations (at which a representative of the Council is also present to represent the views of the Council). The County Executive's approach in this case, by contrast, results in unilateral

determinations rejecting portions of binding contractual commitments which were agreed to as an integrated whole.

Although the instant Charge relates to salaries, insurance, and retirement benefits, the County Executive's position is not so limited. Rather, it would extend to almost any practice, regardless of the dollar amount of its financial impact, if any budgeted funds are needed for its continuation. The County Executive claims the right not only to ignore the law (i.e., the PLRA and the provisions of Sections 303 and 510 of the Charter), but to ignore his own contractual commitments and eliminate unilaterally by means of the budget process and without bargaining a variety of terms and conditions of employment.

The County Executive's actions also eliminate collective bargaining over how to best solve or resolve pending economic issues related to wages and benefits. For example, if there is a certain goal of cost-saving associated with the proposed increase in premium share by employees or increased contribution amounts for retirement, the use of the budget proposal process to solve those problems effectively precludes negotiation over other alternatives (e.g., different changes in plan design, wellness or other initiatives, adoption of other best practices and cost containment measures that might affect cost containment, and the like) that might be more palatable to the Union and the bargaining unit and might result in even greater cost savings to the County with lesser impact on the increased premiums and premium share borne by employees.

The Permanent Umpire understands that this year is an unusually difficult one financially for the County. There was no showing, however, that the actions of the County Executive will save the County money. In the long term, to the contrary, the approach advocated by the County Executive likely will cost the County money.

Under the system created by the PLRA, the County Executive has an incentive to “bargain hard” and to only agree to collective bargaining agreement provisions that it deems responsible since it will be obligated to support funding to implement the entire collective bargaining agreement in the proposed Budget process. Similarly, in the event of an interest arbitration, the County has an incentive to vigorously seek to have its position upheld and to posit in its final offers responsible, yet realistic terms. In this system, which has been in place for 30 years or more, the County Council is the safeguard against expending funds to implement provisions in collective bargaining agreements or interest arbitration awards that, based upon the situation in the current fiscal year, may no longer be affordable and/or responsible when evaluated both absolutely and in light of the competing demands for the available County funds. If the County Executive’s actions in this case are found to be proper, however, one can expect the County Executive agreeing to almost anything (since it would not really be binding in the usual sense of the word) and could be easily avoided either in that same year or in a future year simply by proposing that those provisions never be funded in the budget process.

The PLRA requires that both parties be bound by the terms of the negotiated collective bargaining agreement. No reason exists to interpret the “binding” requirement relative to the County Executive differently than the Union. This is particularly appropriate where the collective bargaining agreement in question (i.e., the 2011 Agreement) resulted in certain gains to the County. The County wishes to keep those gains while at the same time disavowing the commitment that, other than as to the reopener issues, the terms of the Agreement will remain in effect unchanged during FY

2012. As noted earlier, the decision to selectively reject certain contractual terms while continuing to embrace others is inconsistent with the manner in which collective bargaining generally occurs and with the principle that, once agreed to, both parties must continue to abide by all of the terms of an agreement during its term.

The FY 2012 interest arbitration award stands legally in the same status as the 2011 Agreement. That Agreement provided for a reopener and the interest arbitration process proceeded in accordance with the Agreement and the PLRA. The outcome is no less binding upon the parties than if they had voluntarily agreed to that outcome. While the Council on review may or may not be as persuaded that an interest arbitration award lost by the County should be given the same priority as an agreement voluntarily reached in June 2010 with the involvement of the Council, the fact remains that the PLRA and Section 303 of the Charter required that the funds sufficient to implement the terms of that Award be included in the proposed Budget for FY 2012.

Nor may the requirement that the County Executive include in the proposed Budget funding necessary to implement the FY 2012 Award be deemed an improper delegation of governmental authority. First, the provisions of Charter Section 510 explicitly authorize binding interest arbitration. No basis was shown to treat this later enacted Charter provision as somehow subservient to the discretion afforded the County Executive in the preparation and submission of proposed Budgets pursuant to Section 303 of the Charter. Second, the monetary portions of the FY 2012 Award are explicitly conditioned upon the County Council funding those provisions in the adopted Budget. Final authority regarding the expenditure of public revenues rests, therefore, with the elected County Council members, not with interest arbitrators. If the Budget, as

ultimately enacted, does not fund negotiated provisions or provisions ordered to be adopted in interest arbitration, then they will cease to have any effect, both as a matter of law and as a matter of language contained in the FY 2012 Award and the 2011 Agreement itself. Third, as noted previously, Section 303 obligates the inclusion in the proposed Budget of the funds needed to implement the FY 2012 Award because the PLRA requires it and Section 303 mandates that the proposed Budget include items that “may be prescribed by law.”<sup>1</sup>

The provisions of Section 33-80(b) of the PLRA provide no basis for a contrary ruling in this matter. The general management right to determine the overall budget and mission of the employer and any agency of county government was not shown to trump the explicit obligations contained in Sections 33-80(g) and 33-82(a)(8) relative to including in the budget request funds needed to implement an agreement. It is well established that provisions of a statute should be construed, whenever possible, to harmonize all provisions and avoid rendering any language meaningless. Moreover, even if the County were to ultimately assert that Section 33-80(b)(1) justified its actions, Section 33-80(b)(2) requires prior notice, effects bargaining, and use of an impasse neutral, none of which were done here.

For all of these reasons, I find that the County Executive violated Sections 33-80(g) and 33-82(a)(8) of the PLRA by failing to request in the FY 2012 Budget Request funding necessary to implement the 2011 Agreement and the FY 2012 Award. The

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<sup>1</sup> The Parties devoted significant argument to the impact of the provisions of Chapter 651, Laws of Maryland 2010, pertaining to interest arbitration. Arguments were presented relative to the constitutionality of that enactment and whether its application was retroactive, among others. I am unpersuaded that it is necessary to address those arguments since the ruling in this case is unchanged by whether or not Chapter 651 provides yet an additional basis to support the interpretation of the PLRA and the Charter adopted herein.

assertion that Section 303 of the Charter sanctioned this action is rejected. To the contrary, although I lack jurisdiction to enforce a violation of the Charter, I find that Section 303 of the Charter was violated by the County Executive's refusal to follow the directive that the FY 2012 Budget Request conform to applicable law, including specifically the PLRA.

The Complaint that the County Executive Made Unilateral Changes Without Bargaining

Section 33-82 of the PLRA makes it a Prohibited Practice to refuse to bargain collectively with a certified representative. The implementation of unilateral changes to wages, hours and working conditions would qualify as a refusal to bargain. Similarly, abrogating the terms of a collective bargaining agreement would qualify as a refusal to bargain.

In this case, however, I am unpersuaded that the County Executive violated Section 33-82(a)(5) of the PLRA. It made no unilateral change to the terms and conditions of employment required by the Agreement. As of this date, the contributions towards health insurance required of employees are those contained in the 2011 Agreement. The amount of life insurance provided is that contained in the 2011 Agreement. The prescription plan benefits provided are those contained in the 2011 Agreement. The contributions towards retirement required of employees are those required by applicable law and the 2011 Agreement.

The County Executive has improperly proposed in his FY 2012 Proposed Budget that funding to continue to implement these contractual provisions, as well as those directed by the FY 2012 Award, not be included in the final Budget. He has not, however, stated that he will unilaterally make these changes if the County Council

includes funding to allow the existing contractual provisions to be honored. As such, there has been no actual unilateral change to wages, benefits, or other terms and conditions of employment and no abrogation of the Agreement since after July 1, 2011, the provisions of the 2011 Agreement were contingent upon adequate funding being included in the adopted Budget to allow continued implementation of those negotiated terms.

The County Executive's failure to have notified the Union and to have engaged in negotiations prior to proposing to defund those contractual provisions is unfortunate, but is not a Prohibited Practice. There is no obligation to renegotiate with respect to matters that are covered by existing contractual terms during the term of that collective bargaining agreement. Any discussions between the Parties would have been permissive in nature. Ultimately, whichever party wished to insist upon the continuation of the contract terms through its term would have enjoyed the legal right to do so.

Accordingly, to the extent that the Charge seeks a finding that the County violated Sections 33-80(a)(2) or (3) or Section 33-82(a)(5) of the PLRA, the Charge is dismissed. The Doctrine of Immunity Does Not Bar Adjudication of the Prohibited Practice Charge

The County Executive in the April 11, 2011 submission asserted for the first time that the doctrine of legislative immunity precluded the County Executive from being held responsible to comply with the PLRA provisions in this case. The argument is, in essence, that: 1) the submission of a proposed Budget is a quasi-legislative or legislative act; it constitutes proposed legislation that requires Council action to enact; and 2) the Maryland courts have recognized the concept of legislative immunity, adopted a "functional approach" to the concept, and extended it to not only members of Congress,

the Maryland Assembly, and County Councils, but also to any government official engaged in legislative activities.

The County Executive relied heavily upon the decision of the Court of Special Appeals of Maryland in Montgomery County, Maryland v. Schooley, 97 Md. App. 107, 627 A.2d 69 (1993). In Schooley, the Court of Appeals upheld a Motion for Protective Order barring plaintiffs who were challenging a redistricting plan adopted by the County Council from deposing then Council President Leggett, finding that members of the County Council enjoyed legislative privilege and immunity, whether or not asserted by then Council President Leggett. The Court of Special Appeals discussed the origins of the principle of legislative immunity, which was grounded in the “speech and debate” clauses of the Maryland and United States Constitutions, and noted that, while the federal and state immunity provisions did not directly cover members of Maryland local legislative bodies, such as the County Council, the doctrine had been extended as a matter of common law – the common law of official immunity. 97 Md. App. at 114-15. The Schooley Court recognized that the nature and scope of the common law privilege “may depend on the context in which the privilege is asserted” and further recognized, quoting Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 731-32 (1980), that:

The purpose of this immunity is to insure that the legislative function may be performed independently without fear of outside interference . . . . To preserve legislative independence, we have concluded that ‘legislators engaged “in the sphere of legitimate legislative activity” . . . should be protected not only from the consequences of litigation’s results but also from the burden of defending themselves.’

The Schooley Court further stated:

It would seem from this pronouncement that a legislator, even if not a party to the action and thus not subject to any direct consequence of it, cannot be compelled to explain, other than before the legislative body of which he is a member, either his legislative conduct or “the events that occurred” in a legislative session.

I am persuaded that the cited cases are distinguishable from the case at bar in several respects. First, and foremost, there is no attempt to obtain testimony or probe the reasons for any action, whether characterized as legislative in nature or otherwise, by the County Executive. The reasons for the decision not to include sufficient funding to implement the collective bargaining agreement and the interest arbitration award are irrelevant and immaterial to this case. Either the PLRA and Section 303 of the Charter required that the FY 2012 Budget submission included those requests for funding or they did not. Second, this case does not attempt to subject the County Executive to damages or any civil or criminal liability for his conduct. Thus, cases such as Mandel v. O'Hara, 320 Md. 103, 576 A.2d 766 (1990) are also inapposite. Third, the County Executive is not a member of the legislature and there is some question as to whether the decision as to whether or not to comply with the PLRA requirement and the language of Section 303 of the Charter to include certain items in his proposed Budget is an Executive decision or a Legislative one. It clearly has some aspects of each.

The County Executive's argument that the preparation of the proposed budget for submission is a wholly legislative function was grounded upon several related arguments. First, it noted that the submission of the budget was proposed legislation – a function traditionally viewed as legislative in nature. Second, Section 303 of the Charter provides that this particular legislative process – the adoption of a budget – must begin with the County Executive. Additionally, the County Executive asserts that “because the budget return to him for signature or veto, it ends with him as well” (Final Memorandum, at 4). These arguments, however, ignore the potential that any veto could be overridden by the County Council by a supermajority vote under Section 208 of the Charter, ignore that the

delegation of legislative authority to propose a Budget pursuant to Section 303 of the Charter was limited and had as a condition that the Budget submission include such terms as may be prescribed by law, and ignores the fact that the office of the Permanent Umpire was created by legislation enacted by the County Council – the ultimate source of legislative authority – and expressly included as a Prohibited Practice the failure to include sufficient funds in the proposed Budget to implement negotiated collective bargaining agreements. The PLRA, as noted, is also supported in terms of its enforceability, by Section 510 of the Charter, a provision enacted after Section 303.

In sum, there is no basis to conclude that the County Council created a mechanism, signed into law by the County Executive, which improperly and unconstitutionally impinged upon any immunity enjoyed by the County Executive in connection with the budget submission process. The County Executive is obligated to include in the proposed Budget sufficient funds to implement the agreements to which it agreed voluntarily or to which it agreed by operation of law through the mandatory impasse procedure. This results in binding collective bargaining agreements being honored and the Council review process ensures that: 1) if funds necessary to implement the particular contractual provision for the particular fiscal year are not allocated, then the collective bargaining agreement provision becomes invalid; and 2) in that event, there is a process whereby collective bargaining over the issue results in an attempt to seek a workable, appropriate, bilateral solution.

Perhaps most significant, however, with respect to the issue of privilege, as well as whether the actions of the County Executive in proposing a budget is a legislative function, is the decision of the Court of Appeals in Haub v. Montgomery County, 353

Md. 448, 727 A.2d 369 (1999). In Haub, the relevant facts were as follows. The County Executive proposed in his budget the contracting out and elimination of certain jobs. The County Council ultimately adopted that contracting out and job elimination proposal as part of the final budget. The affected employees filed an appeal to the County's Merit System Protection Board prior to the adoption of the final budget approving of that contracting out and job elimination. The Board denied the appeal, finding the complaint non-grievable since it addressed a management function under the collective bargaining law and attempted to challenge issues of contracting out of work. The employees, who were also members of a bargaining unit, filed appeals of the Board's ruling in Circuit Court. During the appeal, the Circuit Court raised the question sua sponte as to whether the appeals were premature and not yet ripe because the employees had not yet been adversely affected by the adopted budget at the time that the appeals were initially filed. In its decision, the Circuit Court found that the grievances were ripe, and found that the matter was not grievable, but on grounds different than those taken by the County and the Board. The Circuit Court found that because the action constituted "legal" actions by the "elected officials" the matter was not grievable, finding within the County Charter the provisions "for the adoption and implementation of budgets and programs for the County . . . are within the prerogative of the county elected officials to consider and implement without oversight by any board including the Merit Systems Protection Board." 353 Md. at 457-58.

The Court of Appeals affirmed based upon its view that, once the County Council adopted a budget that provided for the contracting out of the work in dispute and elimination of the positions, that adopted budget was preclusive on the question of

whether the contracting out was permissible. The Court of Appeals noted that the case did not involve the mere proposed action by the County Executive, which was the factual situation when the complaint was initially made, which the Court of Appeals then described as “entirely a management or agency or executive decision to privatize or contract out certain functions previously performed by employees in the executive branch.” 353 Md. at 461. The Court of Appeals noted that the rescission of the contracting out of the programs and resulting loss of positions could only be granted if the enacted budget and programs were void, analyzed the validity of the Council’s legislative enactment, and found that it was proper. The Court of Appeals did not raise or dismiss the case on the basis that the County Executive or even the County Council was immune from suit on grounds of common law immunity/legislative immunity.

For all of these reasons, the assertion of immunity on the part of the County Executive with respect to the instant Charge is denied.

#### Remedy

Section 33-82 (d) of the PLRA provides that if the Permanent Umpire determines that a Prohibited Practice has occurred, the Permanent Umpire is empowered to issue an Order requiring the charged person “to cease and desist from the Prohibited Practice and to take such affirmative action as will remedy the violation(s) of this article.”

The appropriate relief in this case is to direct that the County Executive submit an amended FY 2012 Budget submission to the County Council forthwith that reinstates to the proposed Budget funds sufficient to implement the 2011 Agreement and the FY 2012 Interest Arbitration Award.

The County Executive is also directed to cease and desist from any action that directly or indirectly opposes the appropriation of funds or the enactment of legislation by the County Council to implement the 2011 Agreement and the FY 2012 Interest Arbitration Award.

Nothing herein should be construed as commenting upon whether the County Council, as part of its review function, should adopt those amendments to the proposed Budget.

The question of the limitations, if any, that Section 33-82(a)(8) places upon the free speech rights of the County Executive, pursuant to Section 33-83 of the PLRA, and other authority, is not presented for decision at this time and nothing herein should be construed as addressing that matter.

**ORDER**

The County Executive violated Sections 33-80(g) and 33-82(a)(8) of the Police Labor Relations Act when he failed to include in his FY 2012 Proposed Budget Submission to the Montgomery County Council funding sufficient to implement the June 2010 Agreement between the County and the Fraternal Order of Police, as modified by the FY 2012 Interest Arbitration Award of Arbitrator Jerome Barrett.

The County Executive is directed to forthwith provide the County Council with an amended FY 2012 Proposed Budget Submission that includes all funding sufficient to implement the June 2010 Agreement between the County and the Fraternal Order of Police, as modified by the FY 2012 Interest Arbitration Award of Arbitrator Jerome Barrett.

The County Executive is directed to adhere to the requirements of Section 33-82(a)(8) of the Police Labor Relations Act by not directly or indirectly opposing the appropriation of funds or enactment of legislation by the County Council to implement the June 2010 Agreement between the County and the Fraternal Order of Police, as modified by the FY 2012 Interest Arbitration Award of Arbitrator Jerome Barrett, for FY 2012.

The Charge that the County Executive violated Sections 33-80(a)(2), 33-80(a)(3), and 33-82(a)(5) of the Police Labor Relations Act is dismissed.

April 28, 2011



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Ira F. Jaffe, Esq.  
Permanent Umpire  
Montgomery County, Maryland  
Police Labor Relations Act

**APPENDIX A**

**RELEVANT PROVISIONS OF THE  
POLICE LABOR RELATIONS ACT**

The Police Labor Relations Act, Sections 33-75, et seq., Montgomery County

Code, provides in pertinent part that:

Section 33-75. Declaration of policy.

It is the public policy of this County, pursuant to charter section 510, enacted as a result of citizen initiative, and purpose of this Article to promote a harmonious, peaceful and cooperative relationship between the County government and its police employees and to protect the public by assuring, at all times, the responsive, orderly and efficient operation of the police department. Since unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur. To that end, it is in the public interest that police employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment through a representative of their choice or to refrain therefrom; and that any collective bargaining between the County government and a representative of those police employees be done in good faith with no interference with the orderly process of government and furthermore, that agreements reached through collective bargaining be implemented.

...

Section 33-80. Collective bargaining.

(a) *Duty to bargain; matters subject to bargaining.* A certified employee organization and the employer must bargain collectively on the following subjects:

- (1) Salary and wages, provided, however, that salaries and wages shall be uniform for all employees in the same classification;
- (2) Pension and retirement benefits for active employees only;
- (3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation;
- (4) Hours and working conditions, including the availability and use of personal patrol vehicles;
- (5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum;
- (6) Matters affecting the health and safety of employees; and
- (7) The effect on employees of the employer's exercise of rights listed in subsection (b).

(b) *Employer rights.* This article and any agreement pursuant hereto shall not impair the right and responsibility of the employer.

- (1) To determine the overall budget and mission of the employer and any agency of county government;
- (2) To maintain and improve the efficiency and effectiveness of operations;
- (3) To determine the services to be rendered and the operations to be performed;
- (4) To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted and the location of facilities;
- (5) To direct or supervise employees;
- (6) To hire, select and establish the standards governing promotion of employees and to classify positions;
- (7) To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive;
- (8) To make and enforce rules and regulations not inconsistent with this law or a collective bargaining agreement;
- (9) To take actions to carry out the mission of government in situations of emergency;
- (10) To transfer, assign and schedule employees.

(c) *Exemption.* Nothing contained in this article shall be construed to limit the discretion of the employer voluntarily to discuss with the representatives of its employees any matter concerning the employer's exercise of any of the enumerated rights set forth in subsection 33-80(b) above, but such matters shall not be subject to bargaining.

(d) *Time limits.* Collective bargaining shall commence no later than November 1 preceding a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded by January 20. The resolution of an impasse in collective bargaining shall be completed by February 1. These time limits may be waived only by prior written consent of the parties.

(e) *Term of agreement.* Any provision of automatic renewal or extension of a collective bargaining agreement shall be void. No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end June 30.

(f) *Effective date of agreement.* Any collective bargaining agreement shall become effective only after ratification of the agreement by the employer and the certified representative, except as provided in subsection 33-81(b)(7). A certified representative may provide its own rules for ratification procedures.

(g) *Submission to Council.* A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties. In each proposed annual operating budget, the County Executive shall describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. Any term or condition of a collective bargaining agreement 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 by April 1, unless extenuating circumstances require a later date. If a later submission is necessary, the employer shall specify the submission date and the reasons for delay to the Council President by April 1. The employer shall make a good faith effort to have such term or condition implemented by Council action. Each submission to the Council shall include:

- (1) all proposed legislation and regulations necessary to implement the collective bargaining agreement;

- (2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and
- (3) all side letters or other extraneous documents that are binding on the parties.

(h) *Council review.* On or before May 1, the County Council shall indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so, and shall state its reasons for any intent to reject any part of the agreement. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15. If the Council indicates its intention to reject any part, it shall designate a representative to meet with the parties and present the Council's views in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in Section 33-81. The results of the negotiation or impasse procedure shall be submitted to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days.

(i) *Adjustments.* Any agreement shall provide either for automatic reduction or elimination of conditional wage or benefits adjustments if:

- (1) the Council does not take action necessary to implement the agreement, or
- (2) sufficient funds are not appropriated for any fiscal year when the agreement is in effect.

(j) *Later years.* The process and timetable in subsection (h) apply to Council review of wage or benefits adjustments after the first year of any multi-year agreement.

(k) *Out-of-cycle amendments.* The process in subsection (h) applies to Council review of any amendment to a collective bargaining agreement that the Council receives after May 15 of any year, but the deadlines in subsection (h) do not apply. The Council President shall set action deadlines which result, to the extent feasible, in a similar timetable relative to the date the Council received the amendment.

Section 33-82. Prohibited practices.

(a) The employer or its agents or representatives are prohibited from:

...

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

...

(8) Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the county council to implement an agreement reached between the employer and the certified representative pursuant to this article;

...

(10) delaying or refusing to participate in the impasse procedure in Section 33-81(c)(2) after the employer implements a final offer under Section 33-81(c)(2)(C).

...

(c) A charge of prohibited practice may be filed by the employer, employee organization, or any individual employee. The charge or charges shall be filed with the permanent umpire, with copies to the party alleged to have committed a prohibited practice. All charges shall contain a statement of facts sufficient to enable the permanent umpire to investigate the charge. The permanent umpire may request withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing. The permanent umpire shall have authority to maintain such independent investigation as the permanent umpire determines necessary and to develop rules and regulations therefor. If, upon investigation, the permanent umpire finds that a charge is sufficiently supported to raise an issue of fact or law, the permanent umpire shall hold a hearing on such charge upon notification to the parties. In any hearing, charging parties shall present evidence in support of the charges and the party or parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense of the charges.

(d) If the permanent umpire determines that the person charged has committed a prohibited practice, the permanent umpire shall make findings of fact and conclusions of law and shall be empowered to issue an order requiring the person charged to cease and desist from the prohibited practice and to take such affirmative action as will remedy the violation(s) of this article. Remedies of the permanent umpire may include, but shall not be limited to, reinstating employees with or without back pay, making employees whole for any loss relating to county employment suffered as a result of any prohibited practice, withdrawing or suspending the employee organization's authority to negotiate or continue membership dues deductions, or agency shop benefits. If the permanent umpire finds that the party or parties charged have not committed any prohibited practices, the permanent umpire shall make findings of fact and conclusions of law and issue an order dismissing the charges.

...

Section 33-83. Expression of views.

The expression of any views, argument or opinion, or the dissemination thereof, whether orally, in writing or otherwise, shall not constitute or be evidence of a prohibited practice under any of the provisions of this law nor be grounds for invalidating any election conducted under this law if such expression or dissemination contains no threat of reprisal or promise of benefit.

## **APPENDIX B**

### **RELEVANT PROVISIONS OF THE CHARTER OF MONTGOMERY COUNTY, MARYLAND**

The Charter of Montgomery County, Maryland, provides in pertinent part as follows:

#### Article 1. Legislative Branch

##### Section 101. 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. The legislative power shall also include, but shall not be limited to, the power to enact public local laws for the County and repeal or amend local laws for the County heretofore enacted by the General Assembly upon the matters covered by Article 25A, Annotated Code of Maryland, 1957, as now in force or hereafter amended, and the power to legislate for the peace, good government, health, safety or welfare of the County. . . .

#### Article 2. Executive Branch.

##### Section 201. Executive Power.

The executive power vested in Montgomery County by the Constitution and laws of Maryland and by this Charter shall be vested in a County Executive who shall be the chief executive officer of Montgomery County and who shall faithfully execute the laws. In such capacity, the County Executive shall be the elected executive officer mentioned in Article XI-A, Section 3, of the Constitution of Maryland. The County Executive shall have no legislative power except the power to make rules and regulations expressly delegated by a law enacted by the Council or by this Charter. (Election of 11-2-82.)

#### Article 3. Finance.

##### Section 302. Six-Year Programs for Public Services, Capital Improvements, and Fiscal Policy.

The County Executive shall submit to the Council, not later than January 15 of each even-numbered year, a comprehensive six-year program for capital improvements. The County Executive shall submit to the Council, not later than March 15 of each year, comprehensive six-year programs for public services and fiscal policy. The six-year programs shall require a vote of at least five Councilmembers for approval or modification. Final Council approval of the six-year programs shall occur at or about the date of budget approval.

The public services program shall include a statement of program objectives and recommend levels of public service by the County government, and shall provide an

estimate of costs, a statement of revenue sources, and an estimate of the impact of the program on County revenues and the capital budget.

The capital improvements program shall include a statement of the objectives of capital programs and the relationship of capital programs to the County's long-range development plans; shall recommend capital projects and a construction schedule; and shall provide an estimate of costs, a statement of anticipated revenue sources, and an estimate of the impact of the program on County revenues and the operating budget. The capital improvements program shall, to the extent authorized by law, include all capital projects and programs of all agencies for which the County sets tax rates or approves budgets or programs. The Council may amend an approved capital improvements program at any time by an affirmative vote of six Councilmembers.

The fiscal program shall show projections of revenues and expenditures for all functions, recommend revenue and expenditure policies for the program period and analyze the impact of tax and expenditure patterns on public programs and the economy of the County.

The County Executive shall provide such other information relating to these programs as may be prescribed by law.

#### Section 303. Capital and Operating Budgets.

The County Executive shall submit to the Council, not later than January 15 and March 15, respectively of each year, proposed capital and operating budgets including recommended expenditures and revenue sources for the ensuing fiscal year and any other information in such form and detail as the County Executive shall determine and as may be prescribed by law. These budgets shall be consistent with the six-year programs. A summary shall be submitted with the budgets containing an analysis of the fiscal implications for the County of all available budgets of any agencies for which the Council sets tax rates, makes levies, approves programs or budgets.  
(Election of 11-6-84; election of 11-3-92.)

#### Section 304. Budget Hearing.

The Council shall hold public hearings on the proposed budget and the six-year programs required by this Charter, commencing not earlier than twenty-one days following their receipt.

#### Section 305. Approval of the Budget; Tax Levies.

The Council may add to, delete from, increase or decrease any appropriation item in the operating or capital budget. The Council shall approve each budget, as amended, and appropriate the funds therefor not later than June 1 of the year in which it is submitted.

#### Article 5. General Provisions.

##### Section 510. Collective Bargaining.

The Montgomery County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County police officers. Any law so enacted shall prohibit strikes or work stoppages by police officers.  
(Election of 11-4-80.)