

Retirement and Pension Benefits are basic topics of collective bargaining.

The bargaining table is the proper place to work out details and to get into the details, equities, and inequities of any proposal. We need to avoid unintended consequences.

This program is the product of the pre-1980 laws, post-1980 collective bargaining, and trade-offs. When we negotiate any retirement change, the cost is a factor in the process and goes to the total cost of the agreement. We have traded pay for retirement improvements, that was part of the deal. It would be bad faith now to rollback any part of that deal without collective bargaining. Each bargained change has been through the legislative process that includes introduction of legislation, a public hearing, at least one committee worksession, a full council session, and a public vote. This is all done in the open with complete transparency.

The inspector general did not contact FOP Lodge 35 about this matter.

FOP Lodge 35 could have provided important and relevant information.

This IG Report was given to the media and others long before it was provided to FOP Lodge 35. We first saw it on September 9, 2008.

Retirement and Pension Benefits are complex packages. One cannot fairly cherry-pick parts of the package without doing grave injury to the entire package and other benefits such as Long Term Disability, Life Insurance, Pay, Disability Leave, and Sick Leave; as well as the collective bargaining process itself.

The Inspector General inflates the cost of the disability pensions:

- The cost is included in the total actuarial cost of the plan.
- The \$13,000,000 for police (\$32,000,000) for the county does not subtract the value of the normal benefit. For example, if the disability benefit is \$49,250 per year and the normal benefit is \$45,000, the true cost is \$4,250 per year not \$49,250. (See below.)

It is simplistic and misleading to look at the percentages of disability retirements in other jurisdictions and compare them to those in Montgomery County without looking at the normal benefit. Fairfax County is used as an example by the inspector general. The normal Fairfax police pension after 25 years credited service is 70% of 103% of Average Final Earnings. In Montgomery County after 25 years it is 60% of 100% of Average Final earnings. The normal Montgomery County benefit is, therefore, considerably less than that in Fairfax. In Fairfax there is no Social Security Integration.

We could turn the story around and allege that Fairfax police officers get better normal pension benefits than disabled Montgomery County police officers. Using example salary and credited service figures printed in a recent Washington Post article, a non-disabled Fairfax County officer receives \$5,058 more per year than the disabled Montgomery County officer. See detail below.

Looking at normal benefits, that normal benefit in Prince George's County is 60% after only 20 years. In Howard County, it is 50% after 20 years and 75% after 25 years. In Baltimore County it is 50% after 20 years and 60% after 25 years. In Montgomery County it is 34.8% after 20 years and 60% after 25 years. There is no Social Security reduction in any of these jurisdictions except in Montgomery County.

At least two or more of the IG's examples are police management employees. They are not union members and are not covered by the contract. We do not bargain for management. Any benefit they have is that which management gave them. Moreover, in general, they receive less of a reduction in pension as a percent of total at Social Security Normal Retirement age than lower paid bargaining unit members.

The officers who resigned and pled guilty to misdemeanors or other crimes are used as red herrings. The question is not whether they were convicted of crimes, but whether they were injured and if that injury was

suffered in the line of duty to the residents of Montgomery County. These cases make for nice sound bites but present serious issues for bargaining. For instance, a police officer is shot and seriously wounded. She is in tremendous pain. As a result of the injury, her family is affected, she is on pain medications, she is having a very difficult time living with this injury and disability. She suffers from Post Traumatic Stress Disorder. Through all of this, she forges a prescription, shoplifts, or writes a few bad checks for which she is criminally charged.

FOP Lodge 35 has some very serious concerns about the treatment of disabled police officers who are not retired. We have been fighting for decent treatment of these officers for well over a quarter of a century. In 1982, the Montgomery County Police Department sought to force a number of police officers to retire. We fought that attempt and, later, in about 1990, we again fought efforts to forcibly retire disabled police officers who could productively contribute as sworn police officers. See attached article from the Montgomery Journal. In 1994, FOP 35 declared that the County had mounted a “massive assault against the disabled.” We wanted to retain those officers who could contribute, but the Country wanted to retire many of them.

Through collective bargaining, we created \a joint labor-management committee to study accommodating disabled officers. Subsequently, we agreed to a contract provision to provide that, “The department will use its best efforts to accommodate chronically incapacitated unit members by assigning them to duties within their capacity and within the bargaining unit. If, despite the department’s best efforts, no such assignment is made and the member is not retired, the employer will accommodate the unit member in accordance with the Americans With Disabilities Act [ADA].”

We have worked to utilize a “restricted duty unit” to accommodate injured officers.

We have filed grievances where officers wanted to return to full or limited duties and were resisted by management. We once filed a grievance because a police officer was involuntarily retired on disability. We prevailed and that officer is a productively employed police detective. We fought against the county’s decision to put out to pasture a police officer with well-controlled diabetes. Now, many years later, that officer is productively employed in a full duty police officer status. Since December 2006, we have sought the cooperation of the office of the current Office of Human Resources Director, who chaired the “work group”, in resolving abuses of the disability processes for active police officers, with little success.

More recently, the County, complaining of the number of chronically disabled working police officers, sought and obtained a contract amendment requiring a reopener should the number of chronically incapacitated officers exceed 1.5% of the bargaining unit.

In past bargaining, we have made concessions. We have agreed in past years to a reduction in the county’s required supplement to workers’ compensation payments from 100% of gross wages to 85%. We have agreed to a reduction in the amount of disability leave an officer may receive from unlimited to 18 months. (Any disability leave in excess of 18 months may be donated by other employees at no cost to the County.)

There is non-analytical talk about percentages. Those disability retirement percentages are not news. Going back many years, the County’s actuary has provided disability figures to the County’s chief administrative officer [“CAO”]. The CAO has annually submitted these reports to the County Council. They are public record. The last report was transmitted on December 10, 2007. Previous reports were submitted on December 8, 2006, December 12, 2005, and in each prior year. [2004, 2005, 2006, 2007 Comprehensive Annual Financial Reports attached. See, for instance, 2007 Report, pp. 62-64 (PDF pages 64-66) for disability retirement assumptions. Each report has similar data.]

More obvious, however, is the 2001-05 actuary's Experience Report, dated April 7, 2006. Here are the published figures.

| Montgomery County Employees' Retirement System Actual and Expected Disability Retirements - Public Safety Only Four-Year Period July 1, 2001- June 30, 2005 | | | | | | | |
|--|----------------------|------------|---------------------|----------------------|----------------------|------------|----------|
| | Disab Retirements | | Actual/ Expected | Actual - Expected | Actual Annual Avg | % of Total | |
| | Actual | Expected | | | | Actual | Expected |
| Male | 55 | 145 | 37.9% | -90 | 13.75 | 69.6% | 83.8% |
| <u>Female</u> | <u>24</u> | <u>28</u> | <u>85.7%</u> | <u>-4</u> | <u>6</u> | 30.4% | 16.2% |
| Total | 79 | 173 | 45.7% | -94 | 19.75 | | |

Source: MCERS Experience Study of Actuarial Assumptions For The Period Ending June 30, 2005. Mercer Human Resource Consulting, April 7, 2006. Pages 12-14. (PDF Pages 14-16)

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As shown, for the four-year period July 1, 2001 through June 30, 2005, it was expected that 173 public safety employees would retire on disability. In fact, the actual number was only 79, or 45.7% (less than half) of the expected total.

Accordingly, the assumptions were changed and are shown in the attached December 2006 Comprehensive Annual Financial Report.

Given that these are public documents, well known to members of the County's Board of Investment Trustees, The County's CPA, the County's actuary, the CAO, the County Council staff director, the Human Resources director who was chairman of the "work group", the unions, the media, and all who might be interested I was surprised that anyone would consider this news".

Below is a preliminary chart showing police separations and disabilities as a percentage of all separations dating to January 1, 1985 and, as a percentage of all retirements.

[See, however, 2007 CAFR, Page 64 (PDF Page 66) that shows assumed retirements by age, e.g., only 20% of those eligible for retirement will actually retire at first opportunity. (Age 46 with 25 years service). From age 50-54, 30% will be retired. Assumes 75% between ages 55-59 and that by age 60, all will be retired. Earlier reports assumed 100% at an earlier age. Therefore, normal retirement decisions might impact the ratio of disability retirements to normal retirements, but, of course, it does not change the raw number of disability retirements. This is demonstrated in the chart below. In 1994 there were 13 disability retirements, representing 14.6% of all retirements while in 1995, there were only 10 disabilities (3 less than 1994), representing 58.8% of all retirements.]

Preliminary Police Retirement Data - January 1, 1985 Through December 31, 2007

| Year | # Disab Retired | # Dis Ret. Less Ann Avg | Average Per Month | Disability 3-Year Average | Total # Separations | Disability As % of Total Sep | Non-Disability Retire | Total Retirees | Disability As % of Total Ret |
|---------------------|---|-------------------------|-------------------|---------------------------|---------------------|------------------------------|-----------------------|----------------|------------------------------|
| 1985 | 10 | -1 | 0.8 | | 40 | 25.0% | 7 | 17 | 58.8% |
| 1986 | 9 | -2 | 0.8 | | 37 | 24.3% | 15 | 24 | 37.5% |
| 1987 | 12 | 1 | 1.0 | 10.3 | 36 | 33.3% | 15 | 27 | 44.4% |
| 1988 | 14 | 3 | 1.2 | | 39 | 35.9% | 8 | 22 | 63.6% |
| 1989 | 5 | -6 | 0.4 | | 33 | 15.2% | 11 | 16 | 31.3% |
| 1990 | 11 | 0 | 0.9 | 10.0 | 33 | 33.3% | 10 | 21 | 52.4% |
| 1991 | 24 | 13 | 2.0 | | 60 | 40.0% | 25 | 49 | 49.0% |
| 1992 | 12 | 1 | 1.0 | | 40 | 30.0% | 22 | 34 | 35.3% |
| 1993 | 9 | -2 | 0.8 | 15.0 | 35 | 25.7% | 8 | 17 | 52.9% |
| 1994 | 13 | 2 | 1.1 | | 105 | 12.4% | 76 | 89 | 14.6% |
| 1995 | 10 | -1 | 0.8 | | 38 | 26.3% | 7 | 17 | 58.8% |
| 1996 | 9 | -2 | 0.8 | 10.7 | 27 | 33.3% | 4 | 13 | 69.2% |
| 1997 | 6 | -5 | 0.5 | | 42 | 14.3% | 10 | 16 | 37.5% |
| 1998 | 11 | 0 | 0.9 | | 41 | 26.8% | 12 | 23 | 47.8% |
| 1999 | 7 | -4 | 0.6 | 8.0 | 46 | 15.2% | 12 | 19 | 36.8% |
| 2000 | 17 | 6 | 1.4 | | 51 | 33.3% | 11 | 28 | 60.7% |
| 2001 | 6 | -5 | 0.5 | | 30 | 20.0% | 5 | 11 | 54.5% |
| 2002 | 9 | -2 | 0.8 | 10.7 | 77 | 11.7% | 48 | 57 | 15.8% |
| 2003 | 12 | 1 | 1.0 | | 105 | 11.4% | 49 | 61 | 19.7% |
| 2004 | 10 | -1 | 0.8 | | 48 | 20.8% | 14 | 24 | 41.7% |
| 2005 | 15 | 4 | 1.3 | 12.3 | 67 | 22.4% | 14 | 29 | 51.7% |
| 2006 | 12 | 1 | 1.0 | | 50 | 24.0% | 13 | 25 | 48.0% |
| 2007 | 17 | 6 | 1.4 | | 63 | 27.0% | 7 | 24 | 70.8% |
| * 2008 | 9 | -2 | 1.3 | 12.7 | 28 | 32.1% | | | |
| Total | 260 | | | | 1143 | 22.7% | 403 | 663 | 39.2% |
| Annual Avg | 11.3 | | 0.9 | | 49.7 | 24.4% | 17.5 | 28.8 | 39.2% |
| 23 Yr Median | 11.0 | | | 10.7 | 40 | | 12 | 24 | |
| 23 Yr High | 24.0 | | | 15 | 105 | | 76 | 89 | |
| 23 Year Low | 5.0 | | | 8 | 27 | | 4 | 11 | |
| NOTES: | 2008 shown through July for informational purposes only. Except for three year average shown, this incomplete 2008 data is not used in totals. Total Number of Officers has increased Over Years, but data not available at this time. 2007 Non-Disability Number Is Low Due to Officers Delaying Retirement To Enter DROP In 2008. This Increases the Ratio of Disability Retirements - expressed here as a percentage. | | | | | | | | |

2002 and 2003 Non-Disability Numbers Are High Due to Officers Exiting Two-year DROP. This
Decreases the Ratio of Disability Retirements.

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1994 Non-Disability Number Is High Due To Large Number of Officers Retiring On Retirement
Incentive. This decreases the Ratio of Disability Retirements.

Total Number of Separations Do Not Include 5 w/ Unknown Year and Include Those With Vested
Pension Benefits.

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As stated *supra*, any valid comparison between retirement plans and benefits requires detailed, competent analysis and study. It can be very time-consuming to compare different retirement plans and their benefits. All comparisons must be apples-to-apples, not superficial. First, we must look at the entire plan in relation to benefits within that plan. For instance, it has been reported in the Washington Post that, "Retirees who qualify for service-connected disability receive two-thirds of their previous salary. In general, a police officer earning \$93,141 who retires on disability after 25 years receives \$62,097 a year tax-free compared with a non-disabled retiree who receives \$55,885. The non-disabled officer's pay would drop to \$38,578 when the retiree begins to collect Social Security. The disabled officer's pay remains the same."

Although we don't know from where the \$93,141 figure came, using that figure, a Fairfax County police officer who retires on a normal retirement would receive a \$67,155 normal benefit with no reduction for social security. This is \$5,058 more than the Montgomery County officer would receive for disability. Clearly, using the Washington Post's example, a non-disabled Fairfax officer is better off than a disabled Montgomery County police officer. [The pension multiplier in Fairfax Co. is 2.8% and final average earnings are increased by 3%. In Montgomery County it is 2.4% with no final earnings increase.]

Also, in Montgomery County, the County is relieved of making non-medical expense worker's compensation payments to disability retired employees. The disability pension "is in the nature of a worker's compensation award", and for that reason is not taxable. The retirement plan does not save any money if the benefit is taxed or not taxed. That is a function of Federal Law and State Law. The workers' compensation offset savings to the County is not shown in the actuarial reports. In Fairfax, as we understand it, the County makes the worker's compensation payments and the disability pension is reduced to offset those payments.

As stated above, to determine the true disability benefit, we must subtract out the value of the normal benefit. In our example above, (using figures published in the Washington Post) the value of the (pre social security) disability benefit is \$6,212 and the value of the normal pension is \$55,885. Depending upon the facts, it might be possible for this example officer to take the normal pension of \$55,885 and collect tax free worker's compensation payments in addition, at higher cost to the county.

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