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County Executive

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OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: Duchy Trachtenberg, Chair
Management & Fiscal Policy Committee
Montgomery County Council

FROM: Sharon V. Burrell *Sharon V. Burrell*
Associate County Attorney

DATE: April 28, 2008

RE: Memorandum of Agreement between Montgomery County and FOP, Lodge 35,
Inc. pursuant to reopener bargaining for FY 2009-2010

Issue

The Memorandum of Agreement between Montgomery County and FOP, Lodge 35, Inc. pursuant to reopener bargaining for FY 2009-2010 contains the following provision:

Art. 24. Section U. *Post Employment Group Insurance and Committee*
For employees hired before July 1, 2008 eligibility and contributions for post employment group insurance shall remain status quo except as modified by this CBA.

In the worksession memorandum dated April 21, 2008, Senior Legislative Attorney Michael Faden and Legislative Attorney Robert H. Drummer raised the question: "Why does the County Attorney believe that this provision is consistent with the bargaining laws and the County Charter?"

Background

Article 31, Section F of the collective bargaining agreement covering the period July 1, 2007, through June 30, 2010, between Montgomery County and the FOP provided for a reopener for the second year of the contract for two articles: Article 24, Insurance Coverage and Premiums and Article 57, Retirement. Pursuant to Article 31, Section F, the parties began bargaining on these topics in September 2007 and concluded negotiations in November 2007.

The terms of the resolution of these issues were included in the award of the Impasse Neutral, Richard Bloch on November 29, 2007.

Legal Analysis

Article 24, Section U of the Memorandum of Agreement must be read in conjunction with other provisions of the parties' collective bargaining agreement. Since 1998, the parties' collective bargaining agreement has set forth benefits for employees after retirement in Article 24, Section P¹:

Unit members hired before January 1, 1987 who retire may continue their current benefits under existing practice (80% employer/20% employee split) for the number of years they participated as an active employee or receive the same benefits for life at a 70% employer/30% employee split. Employees hired after January 1, 1987 shall be eligible for lifetime benefits with a 70% employer/30% employee, premium split. For purposes of this section, 70% employer/30% employee split means that after 15 years of service, the split shall be 70%/30%. For employees with more than 5 years service but less than 15 years service, the employer shall pay 50% plus 2% for each additional year after five, up to a maximum of 70%. However, employees retired on a service-connected disability shall be eligible for a 70% employer/30% employee split regardless of length of service.

The language in new Section U simply affirms what the parties had previously agreed to and provides a cut-off date of July 1, 2008, to clarify that it applies to future retirees who were hired before July 1, 2008.

We believe that this provision is consistent with § 33-80(a)(2) of the Police Labor Relations Law, which requires the County to bargain over pension and retirement benefits for active employees. Section U would not subject all future changes in the eligibility and contributions for the employees after they retire to mandatory collective bargaining. Section U refers to *employees* – it does not refer to retirees. Nothing in Section U changes the clear statutory language that only retirement benefits for active employees are a mandatory subject of bargaining. *See also Allied Chemical & Alkali Workers Local Union No. 1 v. Pittsburgh Glass*, 404 U.S. 157, 172 (1971) (retirees are not employees and are not included within the bargaining unit); *Della Rocco v. City of Schenectady*, 252 A.D.2d 82, 84 (1998) (retirees do not possess collective bargaining rights); *Matter of Aeneas McDonald Police Benevolent Assn's v. City of Geneva*, 92 N.Y.2d 326, 332 (1998) (public employer's statutory duty to bargain does not extend

¹ Section P of the current agreement has been re-codified as Section J pursuant to the Memorandum of Agreement.

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to retirees).

Moreover, it has always been made clear during bargaining sessions that any contract provisions proposed or negotiated regarding benefits for retirees are for future retirees and not current retirees.

Conclusion

Because the clear language of Section U applies to current employees, we do not interpret it as giving bargaining rights to retirees. Therefore, there is no conflict with Charter Section 311, which states that “[n]o expenditure of County funds shall be made or authorized in excess of the available unencumbered appropriations therefore.”

cc: Leon Rodriguez, County Attorney
Joseph Adler, Director, Office of Human Resources
Marc P. Hansen, Deputy County Attorney ✓
Edward B. Lattner, Chief, Div. of Human Resources & Appeals