

In the Matter of Arbitration:

BALTIMORE COUNTY, MARYLAND

and

FRATERNAL ORDER OF POLICE,
LODGE 4

Interest Arbitration

FY 2019 Agreement

Before: Ira F. Jaffe, Esq., Impartial Arbitrator

APPEARANCES:

For the County:

Michael Raimondi, Esq.
(Assistant County Attorney)
George Gay, Director, Human Resources

For the FOP:

Matthew Clash-Drexler, Esq.
(Bredhoff & Kaiser, P.L.L.C.)
Sgt. Cole B. Weston (retired), President, FOP Lodge 4
Sgt. Steven Comegna, First Vice-President, FOP Lodge 4
Sgt. Dave Rose, Second Vice-President, FOP Lodge 4
Det. Ryan Massey, Sergeant-at-Arms, FOP Lodge 4
Lt. Michael DiCara, Vice-Chair, Executive Board, FOP Lodge 4
Cpl. James Rommel, Executive Board, FOP Lodge 4

BACKGROUND

Statement of the Case

This interest arbitration proceeding arises pursuant to §4-5-505 of the Baltimore County Code (“Code”). An impasse was declared pursuant to §4-5-505(a) of the Code. The undersigned was selected as the Impartial Arbitrator pursuant to §4-5-505(b) of the Code. A series of telephone conferences and e-mails between Counsel for the Parties and the Impartial Arbitrator were held in which ground rules applicable to the conduct of this proceeding were

discussed. Pursuant to §4-5-505(f)(1)(iii) of the Code, the role of the Impartial Arbitrator is to decide “any subject area of bargaining or any portion of a subject area that it is in dispute.” That Code provision further requires that the decision “adopt all of the final positions of either the County Administration or the exclusive representative.” Resolutions of disputes in interest arbitration are limited to “no more than one fiscal year.” Code §4-5-505(j).

The Code also strongly encourages continued negotiations in an effort to have the Parties reach an agreement on all issues whenever possible (Code §4-5-505(l)) and provides that the Impartial Arbitrator may mediate at any time before the final resolution of the arbitration (Code §4-5-505(k)).

Substantively, the Code contains factors that the Impartial Arbitrator is to consider (Code §4-5-505(g)), but the listing of those factors is not exhaustive and does not preclude the consideration of “other pertinent factors.” A discussion of those factors and how they relate to the particular impasse in this case will follow later in this decision.

An Overview of the Final Positions of the Parties

1) Items in Both the Final Position of the County and the Final Position of the FOP

The County and the FOP are in agreement that the terms of the existing Agreement be continued without change except as modified by the Interest Arbitration Award for the period from July 1, 2018 through June 30, 2019. The Parties further agree on the following modifications to the FY2018 Agreement to be included in the FY 2019 Agreement:

1) Wages on the pay schedule IV salary scale are to be increased, effective January 1, 2019, by three percent (3%). The mid-year adjustment was agreed to in order to save the County money during FY 2019 since a mid-year 3% wage increase has the same cost during FY 2019 as a 1.5% wage increase that became effective July 1, 2018. The annual cost of a 1% Cost of Living

Adjustment (“COLA”) to the salary scale for the bargaining unit is approximately \$1.7 million, as annual total salaries for the bargaining unit are approximately \$170 million.

2) Steps and longevities shall be guaranteed for FY 2019; and

3) A “me too” or “most favored nation” type of provision that extends to the FOP bargaining unit any increases or new forms of compensation or fringe benefits that are mutually agreed upon between the County and another union. The text of that provision continues in effect language contained in the current agreement, but updates the applicable period to FY 2019.

Items 1) through 3) are identical to provisions that were agreed to between the County and its other labor organizations for FY 2019.

The Final Positions of the County and the FOP also contain identical terms with respect to the following items:

4) An increase in the amount that pay schedule IV employees hired prior to July 1, 2014 will contribute towards their pension from 9.00% of salary to 9.50% of salary, effective January 1, 2019; this provision is similar to increases in pension contribution amounts for members of other County bargaining units, but there are differences in plan design and terms and employee contribution rates amongst the various bargaining units;

5) A continuation of the ban on the furlough or layoff of bargaining unit members during FY 2019; and

6) Changes to the duration provisions of the Agreement to recognize that this is a FY 2019 Agreement.

Items Only in the County's Final Position

The County's Final Position would add the following new Section to Article 5 of the Agreement:

Section 5.16 Department vehicles.

The Police Department in fiscal year 2019 will begin replacing two-hundred and fifty-two (252) Ford interceptors (Taurus) police vehicles (out of a total fleet of eight hundred and eighty [four] (884) vehicles) with Ford Explorers. This exchange in vehicles will continue until all two-hundred and fifty-two are replaced.

The County explained that the estimated cost of the vehicle change would be approximately \$90,000 for the first six months of 2019 and asserted that driving in vehicles that were more spacious and more comfortable would provide tangible benefits to all of the officers as the vehicles were transitioned.

Items Only in the Union's Final Position

1) Shift Differentials (Section 6.8)

The Union proposes that, effective January 1, 2019, the existing shift differential for employees who are scheduled to work Shifts 3 & 4 be increased from 3.15% to 3.5% of the hourly rate of a maximum police officer first class for those hours actually worked during said shift.

The Union proposes that, effective January 1, 2019, the existing shift differential for employees who are scheduled to work Shift 1 be increased from 4.0 % to 4.5% of the hourly rate of a maximum police officer first class for those hours actually worked during said shift.

The proposed increase in shift differential pay for Shift 1 (midnight shift) was estimated at \$0.18 per hour. The data revealed that, on average, 257 officers work on Shift 1. The combined full-year annual cost for the increase in shift differential for officers working on Shift 1 would be approximately \$135,000 (257 officers x \$0.18 x 8 hours x 365 days). This amount is equivalent to a 0.08% COLA or 0.0008 of total salaries. The cost of the proposal in

FY 2019 would be only one-half of that amount in light of the January 1, 2019 effective date of these changes or \$67,500 (equivalent to a 0.04% COLA or 0.0004 of total salaries).

The proposed increase in shift differential pay for Shifts 3 and 4 (evening shifts) was estimated at \$0.12 per hour. The data revealed that, on average, 296 officers work on Shifts 3 and 4. The combined full-year annual cost for the increase in shift differential for officers working on Shifts 3 and 4, therefore, would be approximately \$104,000 (296 officers x \$0.12 x 8 hours x 365 days). This is equivalent to a 0.06% COLA (or 0.0006 of total salaries). The cost of the proposal in FY 2019 would be only one-half of that amount in light of the January 1, 2019 effective date of these changes or \$52,000 (equivalent to a 0.03% COLA or 0.0003 of total salaries).

The total estimated costs for the increases in shift differential for all shifts, therefore, are \$239,000 (annual) or \$119,500 (FY 2019), which are equivalent to a 0.14% COLA or 0.0014 of total salaries (full year cost) or a 0.07% COLA or 0.0007 of total salaries (FY 2019 cost).

Evidence was introduced regarding the negotiated shift differentials for other comparator jurisdictions in Maryland.

County	Shift Differential Evenings	Shift Differential Midnight Shift
Baltimore County current	\$1.07	\$1.36
Baltimore County proposed rates	\$1.105	\$1.40
Baltimore County FOP proposed (including 3% increase)	\$1.23	\$1.58
Anne Arundel County	\$1.69 (5% of pay)	\$1.69 (5% of pay)
Baltimore City	\$0.40	\$0.45
Howard County	\$1.20 (3% of pay)	\$2.39 (6% of pay)
Montgomery County	\$1.42	\$1.87
Prince George's County	\$2.30	\$3.60
Average (excluding Baltimore County)	\$1.40	\$2.00

Those who work on the midnight shift (Shift 1) largely work that shift on a permanent basis. Those who work on the evening shifts (Shifts 3 and 4) rotate between the evening shift

and the day shift (Shift 2) every two weeks. Thus, the officers who work midnights receive differential every week, but officers who work on evening shifts receive the differential only one-half of the weeks (as do their counterparts who rotate to evening shifts from day shift).

The Union introduced a number of studies that describe issues associated with rotating and shift work, including the disruption of the circadian rhythms and increased rates of restlessness, sleep disorders, fatigue, decreased attention, and disruption of metabolic processes. There also was an indication of increased rates of various other serious health conditions for those working rotating shifts or at night, such as cardiovascular disease, diabetes, obesity, depression and mood disorders, gastrointestinal problems, infertility, and cancer.

2) Holiday Pay (Section 6.11)

The Union proposes to add language that memorializes the existing practice with respect to the payment of employees who are scheduled not to report to work on a holiday pursuant to Section 6.11(B) of the Agreement, but who are then recalled to work on that holiday.

The agreement in Section 6.11(B) to allow officers who would normally be scheduled to work on a holiday to instead remain on leave status without charge to individual leave and to not report to work saves the County the cost of the premium that those officers would have received if they had been required to actually work on the holiday.

Section 6.11(B) was first added to the collective bargaining agreement and became effective in 2011. Since that time, any officers who are in that situation and who are then called back into work on the holiday have been paid for hours actually worked at time and one-half, with 4 hours of minimum pay at time and one-half. That payment was in addition to the straight time pay in the form of leave that the officers receive by virtue of Section 6.11(b) of the Agreement. Those payments admittedly reduce the savings obtained by virtue of Section

6.11(b), but the record indicates that those additional costs are not significant in the aggregate. In light, however, of the fact that the newly proposed Section 6.11(c) language does nothing more than memorialize the existing practice, the most appropriate course is to treat the cost of this new language as zero.

The County indicated that it had no plans to change the prior practice regarding payments to officers who were released from work on the enumerated holidays, but who were then called back into work and who worked on the holiday.

3) Field Training Officers Differential (Section 6.12)

The Union seeks to increase the differential paid for hours worked as Field Training Officers (“FTOs”) from \$2.50 per hour to \$5.00 per hour.

FTOs are responsible for mentoring and overseeing new graduates from the Police Academy when they transition to active police service. The period of time in which a new graduate is assigned an FTO is 320 hours (8 weeks of 40 hours). For many years, the County has paid officers who serve as FTOs differential pay for that extra work. The present FTO differential rate has remained unchanged since 2009.

Other comparator counties in Maryland also pay their officers FTO differential pay.

Evidence was introduced regarding the following:

County	FTO Differential Pay
Howard	\$50.00 per day (\$4.17 per hour) for officers with less than 5 years of service \$100.00 per day (\$8.33 per hour) for officers with 5 or more years of service
Baltimore City	\$40.00 per day (\$4.00 per hour)
Prince Georges	\$6.00 per hour
Montgomery	\$3.50 per hour
Anne Arundel	\$40.00 per day (\$4.00 per hour)

The record revealed that new FTO Regulations were introduced, effective July 1, 2016, requiring Instructor Certification for FTOs, including initial FTO training of 21 hours and refresher training at least every three years of 7 hours.

This item was one that was projected to be of limited cost. In 2015, 73 recruits received field training. In 2016, 72 recruits received field training. In 2017, 80 recruits received field training. While the numbers will vary somewhat from year to year, over this three year representative period, an average of 75 recruits annually received field training. The full year annual cost of the Union's requested increase in FTO pay would, therefore, be: 75 recruits x 320 hours per recruit = 24,000 hours of FTO work x \$2.50 increase in FTO differential pay = \$60,000.00. This cost is equivalent to a 0.035% COLA adjustment to the salary scale (0.00035 of total salaries).

The proposed increase is to take effect as of January 1, 2019. There was no indication as to whether that mid-year implementation would result in the cost for FY 2019 to the County being one-half of a full year's cost or some other cost. In the absence of any evidence to the contrary, however, the most appropriate estimate of the FY 2019 fiscal impact of this provision is \$30,000 – one half of the full year cost in light of the mid-year implementation of the change. The cost of the proposal in FY 2019 is equivalent to a 0.018% COLA (or 0.00018 of total salaries).

DISCUSSION AND OPINION

The relevant statutory provisions, found at Section 4-5-505 of the Baltimore County Code, require that the Arbitrator “issue a written decision that . . . adopts all of the final positions of either the County Administration or the exclusive representative” and which “direct[s] the County Administration and the exclusive representative . . . to prepare a proposed memorandum of understanding which incorporates the written decision under this subsection.” Code Section 4-5-505(f)(1). The Code further requires that, in making the decision in this case, the Arbitrator consider, among other pertinent factors, the following enumerated factors:

- (i) The existing terms and conditions of employment of the employees of the representation unit;
- (ii) The wages, hours, or terms and conditions of employment of other employees performing similar services in comparable departments in the State of Maryland, taking into consideration the cost of living index for the area in which any such comparable department is located;
- (iii) The wages, hours, or terms and conditions of employment of other Baltimore County employees;
- (iv) The last published annual U.S. Department of Labor Consumer Price Indexes For All Urban Consumers, All Items, Washington-Baltimore Index;
- (v) The special nature of the work performed by the employees of the representation unit including:
 - 1. Hazards of employment;
 - 2. Physical requirements of employment;
 - 3. Educational qualifications;
 - 4. Job training and job skills;
 - 5. Shift assignments; and
 - 6. The demands placed on the employees compared to the demands placed on other Baltimore County employees;
- (vi) State and county mandated expenditures;
- (vii) The availability of funds, including financial resources and sources of additional revenue; and
- (viii) The interest and welfare of the public.

Code §4-5-505(g)(1). The Code also directs that, in considering the availability of funds, the Arbitrator shall only consider the general fund revenues for the upcoming fiscal year under §706(a)(1) of the Charter and may not consider funds for capital improvements or surplus contingency or reserve funds under §§706(a)(3) and (6) of the Charter.

The Union's Final Position seeks increases in shift differential pay to officers working on the evening shifts and on the midnight shift. The proposal of the Union is justified based upon the unique effects that nighttime and rotating evening shift work has on individuals working the heavily stressful jobs of police officers. The scientific literature has documented the physical and psychological impacts of being required to work on evening and night shift work – either on a rotating basis or on a fixed basis – a fact that the County itself has recognized by virtue of the current agreement that provides significant shift differential pay. This has also been recognized in other comparator jurisdictions locally which pay their police officers shift differential pay. The question in this case is the amount of that pay. There is no dispute that the shift differential pay of Baltimore County lags far behind that of most surrounding jurisdictions. As noted earlier herein, with the exception of Baltimore City, the shift differentials payable to police officers in Baltimore County are significantly below the differentials payable in other comparator local jurisdictions. With the exception of Baltimore City, which in this area appears to be an outlier, the shift differential pay under the County's proposal would be between 10% lower and 120% lower than the shift differential pay in comparator jurisdictions (shifts 3 and 4) and between 20% lower and 157% lower than the shift differential pay in comparator jurisdictions (shift 1). The increases in shift differential pay while significant will still leave Baltimore County the lowest shift differential (Shift 1) and comparable to the lowest shift differential (Shifts 3 and 4) if one excludes Baltimore City. The overall cost of the Union's Final Position with respect to shift

differential is, as noted below, not excessive and is within the County's ability to pay in this case. Granting the requested increase in shift differential pay is also such a small cost item relative to total salaries and benefits (equivalent to a 0.07% COLA increase) that it cannot be found to be inconsistent with the internal pattern for County employees in this round of bargaining.

The Union's request for an increase in FTO differential is similarly justified. Since the FTO has last been set at its present rate in 2009 a number of factors support an increase in that rate. First, there has been inflation in both living costs and wage rates in that period. By the time that this increase will become effective, almost 10 years will have elapsed since the establishment of the \$2.50 rate. Second, there have been changes in training and a new certification requirement applicable to work as an FTO. Third, the record reflects that the existing rate is lower than all of the other comparator jurisdictions by a significant amount. Granting the Union's request will place Baltimore County in the midst of the group of comparator counties used in this case. Fourth, even though the amount of the increase is significant (a 100% increase in the differential pay), the cost for providing this increase was not significant – \$30,000 in FY 2019, a cost equivalent to a slightly less than 0.02% COLA. All of these factors together support adopting the proposed increase in the FTO differential, rather than maintaining the 2009 level for another collective bargaining agreement.

The portion of the Union's Final Position relative to holiday pay is nothing more than a memorialization of the existing situation and has zero cost. The County did not indicate any objection to the practice or its continuation. Accordingly, adoption that proposal also appears appropriate and consistent with the criteria contained in Section 4-5-505(f)(1) of the Code.

The County's Final Position included a new proposal related to the selection of replacement vehicles by the County. The newly proposed contractual language would, for the

first time, include in the collective bargaining agreement commitments regarding the selection of vehicles for officers and a schedule for when they would be placed into service. There was no detailed explanation regarding the proposed FY 2019 cost for that proposal or any explanation of the reason why those types of costs should be treated as equivalent to wage and benefit costs. Nor, given the cost of new vehicles of the type described in the Final Position, was there any indication of number of new vehicles that the County planned to put into service for bargaining unit members in FY 2019. The \$90,000 cost figure, however, would suggest that significant numbers new vehicles for bargaining unit members were not contemplated to be placed into service in FY 2019. Finally, there was no indication as to whether, if the Union's Final Position were adopted, the County would nevertheless proceed to purchase and place into service Ford Explorers when the existing fleet of Ford Taurus interceptors is retired, either on the original schedule or on an adjusted schedule.

When these items are considered together, I find that the more reasonable and appropriate Final Position for inclusion in the new FY 2019 Agreement is the Final Position of the Union. As noted, the wages, hours, and other terms and conditions of employment of other employees performing similar services in comparable departments in the State of Maryland, support the increases in shift differential pay and in Field Training Officer pay. The special nature of the work performed by law enforcement officers also supports those changes. The Union's Final Position has a cost that was affordable in light of the availability of funds and is consistent with the pattern set in this round of bargaining with other employees of Baltimore County; it is slightly higher, but not meaningfully higher, than the wage and benefit pattern agreed to by other unions with the County. Moreover, the cost of the Union's Final Position – which exceeds the cost of a 3.0% mid-year COLA by less than a 0.09% COLA equivalent in FY 2019 – cannot be

found to be unaffordable or to inappropriately break the internal pattern of settlements by the County with its unions. If one adjusts the modest cost of adopting the Union's Final Position to recognize the cost savings realized from not adopting the County's Final Position and/or to recognize some of the increase in employee contributions of an additional 0.5% of pay towards pension contributions (which achieves a savings in FY 2019 alone to the County of approximately \$425,000 in pension costs and far exceeds the improvements in shift differential and FTO differential pay), it is even clearer that the Union's Final Position is supported by the criteria set forth in Code §4-5-505(f)(1) and must be adopted.

For all of these reasons, pursuant to Code §4-5-505(f)(1), the Award in this case adopts the Final Position of the Union over that of the County. Except as modified by the Final Position, all provisions of the existing collective bargaining agreement are to be continued for FY 2019.

AWARD

Pursuant to Section 4-5-505(f)(1) of the Baltimore County Code, the Final Position of the FOP Lodge 4 is adopted.

The County Administration and FOP Lodge 4 shall prepare a Memorandum of Understanding that incorporates this decision.

March 29, 2018



Ira F. Jaffe, Esq.
Impartial Arbitrator