

Public Sector Unions and Public Administration:
The Impact of Statutory Collective Bargaining

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The Impact of Statuary Collective Bargaining**

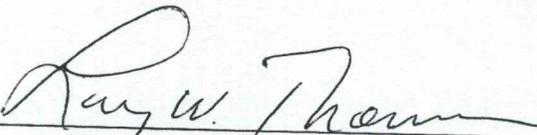
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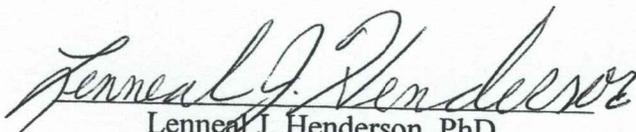
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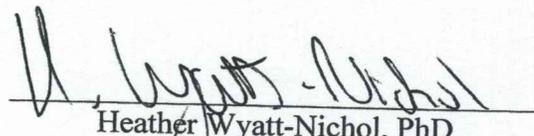
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ABSTRACT

Public Sector Unions and Public Administration: The Impact of Statutory Collective Bargaining

Joseph Adler

This dissertation attempts fill the gap in public administration research by undertaking a comparative case study of the effects of collective bargaining on public administration and human resource management. The findings suggest that the presence of legally mandated collective bargaining does not guarantee consistent economic gains, nor does the combined presence of a bargaining law and union political involvement lead to union favorable outcomes in public policy issues. Unions have a large impact on ensuring employee due process and on management's ability to unilaterally determine changes in policies and processes. Management rights clauses do not appear to be effective against unions' determination to represent members in all aspects of the working environment.

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CHAPTER 1

INTRODUCTION

From the 1930s to the early 1970s, organized labor in the private sector of the United States represented over one-third of all workers and collectively possessed an outsized influence in key industries such as manufacturing, transportation, and communication. However, by the end of the twentieth century, organized labor's power and authority in the workplace eroded significantly. By 2014, less than 7 percent of workers in the private sector were union members (Bureau of Labor Statistics 2015). At the same time, the penetration of unions in the public sector—specifically state and local governments—grew appreciably, reaching and exceeding the levels previously enjoyed by their private sector counterparts (Nigro and Nigro 2000, 211). Indeed, 41.4 percent of public employees in the United States were members of unions by 2009 (Riccucci 2011, 204).

Many public administration practitioners (particularly in jurisdictions with collective bargaining) have come to view unions as a permanent part of the landscape, especially in the area of human resource management. However, within the last several years, public

administrators and policy makers in a number of state and local governments have begun to witness the decline of union power and influence. Once viewed as nearly invincible, unions have come under increasing condemnation and have suffered losses in their ability to maintain negotiated benefits and to advocate robustly for their members. State governments traditionally viewed as responsive to public unions—i.e., California, Connecticut, Illinois, Massachusetts, New Jersey, and New York—have begun to push back, seeking to reduce economic benefits, and modify work rules viewed by management as overly restrictive (Walters 2010).

Contemporary developments led primarily by Republican governors or state legislatures starting in 2010 (Slater 2011), have, in several states and local governments, posed serious challenges to the ability of unions to represent public employees. Jurisdictions such as Florida, Indiana, Arizona, and Minnesota, have launched full frontal assaults against public unions, seeking to weaken or even eliminate the ability of public employees to engage in collective bargaining and other union activities (Buntin 2010; Greenblatt 2011; Greenhouse 2011).¹ In particular, the governors of Wisconsin and Ohio—jurisdictions that

¹Florida restricted and Indiana ended state employee collective bargaining in 2005 (New York Times, February 26, 2011).

historically supported public sector unions—attempted to permanently reduce public union power and influence. These policy initiatives resulted in a defeat for public unions in Wisconsin, but a come-from-behind victory in Ohio.

Wisconsin was the first state to grant collective bargaining rights to public employees in 1959, but in 2011 the state flipped 180 degrees by radically limiting public union power and bargaining rights (Kaufman 2015). Governor Scott Walker (R) introduced Act 10, a “budget repair bill” that all but eliminated the rights of public sector unions. The legislation reduced the scope of bargaining by excluding pensions, benefits, and employee protections. Only base wages, which cannot exceed the rate of inflation, remain negotiable. Collecting union dues through payroll deduction is now prohibited; unions are now required to individually collect dues from each member. Act 10 also obligates unions that wish to represent employees for collective bargaining purposes to go through a vote each year in order to be recertified by a majority of eligible voters. Act 10 did exclude one group of employees from coverage, the Wisconsin State Police Troopers and State Police Inspectors (Greenhouse 2014).

At the same time Wisconsin’s legislature was considering Act 10, John Kasich, the Republican governor of

Ohio, submitted similar legislation, SB 5, to curtail public sector bargaining in his state. SB 5 sought to increase employee contributions for pensions and health care; limit the accumulation of holidays, annual, and personal leave; and eliminate automatic step and longevity wage increases with a system based on merit, as determined by management. SB 5 limited the scope of bargaining by removing benefits from being negotiated and, in case of impasse, to allow jurisdictions, not arbitrators, to impose a final offer (Vardon and Siegel 2011). Unlike Wisconsin's legislation, Governor Kasich's bill did not exempt any public safety unionized employees. Public sector unions in both states strongly opposed the attempts to weaken their powers, and mobilized massive demonstrations and lobbying campaigns to defeat the measures; nevertheless, they were adopted by the two state legislatures and signed by both governors. Not accepting defeat at the hands of a hostile political power structure, public sector unions in Wisconsin and Ohio subsequently employed somewhat dissimilar tactics to attempt to restore their bargaining power. In Wisconsin, they mounted a vigorous but unsuccessful attempt to recall Governor Walker.² Ohio's unions, on the other hand, mounted a robust grass roots

²Walker was the first governor in the United States to survive a recall election. He went on to win a second term [Stein and Marley 2013].

campaign and collected nearly one million signatures to place SB 5 on the ballot for a statewide referendum. On Election Day in 2011, SB 5 was overwhelmingly defeated, 61 to 39 percent (Vardon and Siegel 2011).

The union victory in Ohio did little to stem the movement to limit, if not eliminate, the power and influence of public sector unions. In 2011 alone, over seven hundred bills were introduced by state and local officials seeking similar curbs. These efforts ran the gamut from attempting to narrow the scope of bargaining to enacting more comprehensive right-to-work laws (thereby removing the ability of unions to collect dues), or to requiring an "agency shop" whereby dues or fees are collected from all employees who are covered by the collective bargaining agreement (Simon 2011). The National Conference of State Legislatures (NCLS 2015) reports that, within the last several years, the number of right-to-work states has increased to 25 (Ibid.). One critic of public sector collective bargaining (Douthat 2015) summarized the conservative political opposition by stating that, "the rise of public sector unions represents a decadent phase in the history of the welfare state, a case study in the warping influence of self-dealing and interest-group politics."

Public Sector Unions in the 21st Century

Are the circumstances described above a manifestation that public sector unions are truly vulnerable and perhaps starting to experience the same decline that has befallen their private sector counterparts? Or, are they merely a temporary hindrance, similar to the challenges cyclically encountered and surmounted by public sector unions after their legalization and rapid rise to power from the mid-1960s to the mid-1970s? As detailed in Chapter 2, public sector unions have endured cycles of negative political and economic conflict and, for the most part, emerged without substantive long term impairment to their power and influence.

Whether the events described above portend a slide into powerlessness or merely reflect a temporary phenomenon cannot be answered without empirical research, and regrettably, the field of public administration cannot currently provide a response. Despite the importance of this policy development, scholarship and the literature in the field of public administration has been devoid of such inquiry for many years. Writing in 1988, David Lewin, a scholar of collective bargaining and business, observed that, despite the attention paid to the rapid advancement of collective bargaining in state and local governments,

there is a dearth of research focusing on jurisdictions that lack formal bargaining structures. The relative absence of such research, he argued, made it difficult to explore the differences between represented and non-represented jurisdictions in terms of how they handle the broad range of employee centered concerns including economic benefits, work rules or due process issues (Lewin 1988, 585). Richard Kearney, a leading scholar on public sector human resource management, is critical of the field of public administration because of the absence of scholarly work on the impact of public sector unionism. He notes that:

despite the importance of unions and collective bargaining in all sectors of government, there is a relative paucity of labor relations research by public administration and policy scholars. It is difficult to say why. Perhaps public employee labor relations is not as attractive a research topic as is private sector labor relations because of the "social movement" and "class struggle" identification of labor in business, and labor's sometimes violent struggles to gain recognition and bargaining rights from firms for the "oppressed workers." Government labor relations is generally more tranquil and somehow less threatening, and for that reason perhaps less interesting as a subject of study. To put it another way, "justice for janitors" seems intrinsically more interesting than "justice for bureaucrats." (Kearney 2010, 89)

Kearney's indictment of the field of public administration for ignoring unions and collective bargaining especially resonates since he is one of the few

scholars who remained interested in the field of public sector collective bargaining. Kearney's criticism is reiterated by Norma Riccucci, a prominent public administration scholar. Riccucci found that at the inception of government union activity, public administration researchers focused primarily on analyzing the impact of importing or imposing a private sector industrial relations collective bargaining model on public sector policy making, and the delivery of public sector services (Riccucci 2011, 204). Riccucci also found that this initial interest was soon abandoned by public administration researchers, and other academic disciplines—particularly economics, law, industrial relations and management studies—filled the void. Riccucci cites studies showing that from September 1980 to June 2010 the *Review of Public Personnel Administration* (ROPPEA), a leading public administration scholarly journal, only published 29 articles concerning public sector labor relations out of a total of 581 articles (Riccucci 2011, 204). This is less than 0.5 percent, a conspicuously low output for a journal whose mission is to, “present timely, rigorous scholarship on human resource management in public service organizations,” particularly studies that, “analyze the effects of specific human resources procedures or programs

on the management function and studies that assess . . . the broader areas of public policy and administration.” (ROPPA 2015, under Mission Statement).

As will be discussed in Chapter 2, the literature that does exist on this topic tends to narrowly focus on what is termed the “union effect” on salaries; that is, whether unionized public employees enjoy higher earnings than their non-unionized counterparts. There is a dearth of research on other aspects of the union-nonunion effects continuum (especially on benefits other than salaries), on public sector management issues, and the potential impact of public sector unions in the political arena. Riccucci points out that the presence of unions in state and local governments provides a number of opportunities for empirical research and contribution to the field of public administration:

unions play an important role in policy making, externally through their political activities and internally through collective negotiations on matters ranging from job descriptions and work rules to overall government expenditures . . . Public employees are often considerable campaign contributors as well . . . The American Federation of State, County and Municipal Employees was the largest spender of 2010, even outspending the U.S. Chamber of Commerce. (2011, 205)

Statement of Purpose

The purpose of this research project is to fill the gap in public administration research, and contribute to the literature by undertaking an empirical study of the effects of collective bargaining on public administration and human resource management by seeking to answer the research question: *what is the impact of statutorily mandated collective bargaining on local government?* A number of measurable employee results and union activities are compared and analyzed in the dissertation. Does collective bargaining produce superior employee economic outcomes on wages, health insurance coverage, paid time off, and retirement benefits? Has the traditional reliance on lobbying and political involvement by public employee organizations decreased in importance as a result of statutory collective bargaining? Are the apprehensions expressed by some public managers and political leaders, concerning intrusions on policy making and the efficient delivery of public services from unions in government, grounded on experience or predisposition? Based on the findings for these issues, is there value that collective bargaining offers to public employees?

Given both the current effort to reduce the power and influence of government employee unions, as well as the

pivotal role they customarily play in local government, public policy and administration confirms the need for additional research.

Of particular relevance to this research project is Lewin's comment that the lack of research into non-unionized jurisdictions hinders a broader understanding of the impact of public sector collective bargaining. Focusing only on unionized public sector jurisdictions, or limiting the analysis to the salary effect, is to miss the context and the total impact unions and collective bargaining may yield. This dissertation, therefore, will compare two demographically similar local governments, Montgomery County, Maryland, and Fairfax County, Virginia—the former with legally mandated employee collective bargaining, and the latter with a legal prohibition of the same—to determine the impact of collective bargaining on such variables as wages, health benefits, leave policies, and pensions. Analysis of relevant documents, such as salary plans, health insurance offerings, pension statutes, employee handbooks, and collective bargaining laws and agreements, will be utilized along with in-person interviews of key stakeholders in both jurisdictions. Additionally, the research will compare public sector union and employee association involvement in lobbying, and

participation in electoral political campaigns. To make valid comparisons between the union and non-union jurisdictions, the analysis is mostly limited to uniformed public safety employees: police officers, firefighters and paramedics, correctional officers, and deputy sheriffs. Utilizing this methodology is consistent with Riccucci's suggestion to engage in exploratory research and case studies involving one or two different governments to "inform the body of knowledge on public sector unionism." (Riccucci 2011, 206).

Relevance of Study and Organization of the Research Project

A finding indicating that unions are able to provide economic benefits, employee engagement, and due process rights superior to non-collective bargaining jurisdictions, may signify that public employees will value their representation and resist efforts to weaken it. Conversely, if there are little or no improvements in benefits or working conditions for represented public employees, the motivation to become or remain unionized may be undermined. For the reasons described earlier, the findings and analyses of this research proposal can begin to address the void in the literature of public administration, and add to the public sector collective bargaining knowledge base.

The next chapter (Chapter 2) of this dissertation is a review of the literature dealing with unions in both the private and public sectors. Private sector union scholarly research is included to provide context and to gain insights into the near total collapse of what was once a powerful social and economic movement in the United States. Literature on public sector unions focuses on their 50 plus years of existence, including the reasons for their rapid growth, and their ability, thus far, to remain an influential player in state and local government administration. Chapter 2 also reviews articles dealing with the effect of public sector collective bargaining on wages and salaries of represented employees.

Chapter 3 is the methodology chapter, detailing the research methods employed to answer the research question. A comparative case study utilizing primarily qualitative methods is utilized. Data on the demographic and economic similarities between Montgomery County, Maryland, and Fairfax County, Virginia, is analyzed to show their similarities as valid jurisdictions to engage in a comparative case study. Additionally, Chapter 3 describes the sources of data for analyzing the independent variables, including 57 archival records or documents, and in-person interviews with 18 knowledgeable stakeholders.

Chapter 4 contains the findings of the research project. It compares the base salaries, health insurance costs, paid time off, and pension plan benefits for police officers, firefighters, deputy sheriffs and correctional officers in Montgomery and Fairfax Counties. Chapter 5 compares and analyzes political activities and lobbying efforts of unions and employee organizations in the two jurisdictions under study. Chapter 5 also evaluates the effectiveness of the utilization of political campaign contributions by public safety unions on a number of key policy and legislative initiatives in Fairfax and Montgomery Counties. Chapter 6 contains an analysis of the impact of collective bargaining contracts and the bargaining statutes on public administration.

Chapter 7 is the last chapter of this dissertation. It reviews the research question and the findings in the areas of economic gains, public administration and public policy issues, and management flexibility. The chapter also discusses the constraints faced by policy makers when collective bargaining statutes attempt to create a distinction between bargainable and non-bargainable topics, an issue that has implications for public administrators and policy makers beyond Montgomery County, Maryland. Additionally, Chapter 7 reviews the latest data on union

membership in the United States, and makes a number of suggestions for further research.

CHAPTER 2

REVIEW OF THE LITERATURE

Introduction

This dissertation attempts to gauge the impact of union activity on local government. A definition of trade unions, therefore, is in order. Albert Rees, a labor economist, defines trade unions as, "associations of employees that seek to improve the economic positions of their members primarily by bargaining with employers within the broad framework of the existing economic system." (Rees 1989, 3). To gain a full appreciation of how and why some public employees came to be represented by trade unions, it is necessary to examine the labor movement's efforts to protect the interests of workers against the conditions brought about by the industrial revolution. Phillip Dray, a historian, states that workers of that era sought to defend themselves from the, "brutal conditions and sameness" of the factory floor and that, "industry was cruel and uncomprehending of the human beings it employed" (Dray 2010, 7). As discussed in the following section of this chapter, labor unions in the private sector had an especially difficult task since the forces of organized capital strongly resisted labor unions and utilized all

methods to eliminate them from the workplace (Dray 2010, 8). Despite these challenges, a number of national labor organizations were formed in the 1850s and 1860s, such as the Knights of Labor, the National Labor Union, the Noble Order of the Knights of Labor, the Knights of St. Crispin, and the International Typographers Union (ITU). They faced vehement opposition from employers and hostility from the legal system in attempting to improve the economic plight of workers. They also lobbied for state and national legislation to curtail child labor and to limit the number of hours worked in a day. Progress was slow, incremental, and often reversed. Indeed, it was not until the enactment of the National Labor Relations Act (NLRA) in 1935 that labor won the legal right to organize and engage in collective bargaining in the United States.

The modern labor movement traces its history to 1886 when Samuel Gompers founded the American Federation of Labor (AFL), as most other national labor organizations ceased to exist at that time (Rees 1989, 9). The AFL eschewed radical politics and social causes (such as temperance) in favor of business unionism, focusing on members' wages, hours, and working conditions. Its fortunes and membership waxed and waned depending upon the national economic cycle or the ability to organize certain

industries in face of employer opposition. After the enactment of the NLRA organized labor experienced a steady growth, both in actual numbers and as a percentage of the workforce. In 1920, the AFL represented 17.6 percent of the nonagricultural workforce; at the beginning of the economic depression in 1929, membership dropped to 12 percent of the workforce, and at the height of the depression in 1933 it represented 14.7 percent of U.S. workers. Two years after the NLRA went into effect, union membership grew to 18.4 percent of the workforce, and by 1945 labor represented 30.4 percent of nonagricultural workers. The apex of union workforce penetration was achieved in 1953 with 32.5 percent of workers in the United States (Rees 1989, 11). Thereafter a slow contraction began, which soon turned into a free fall, wherein private sector union membership continued to shrink to single digits in the workplace—down to 6.6 percent in 2014 (BLS 2015) with no indication that the decline has reached its nadir.

The decline in power, influence, relevance, and workforce penetration experienced by private sector unions is inverted among unions representing public sector employees. Prior to the 1960s, public sector union activity in state and local government was limited to a few skilled trades and to teachers, firefighters, and perhaps police

officers. Within a decade, and in the absence of national legislation, public employees organized on an unprecedented level, with the result that, by the end of the 1970s, unions represented more public employees on a percentage basis than private sector employees. In 2014, 29.8 percent of state employees belonged to unions, and 41.2 percent of local government employees were union members (BLS, 2015). Indeed, the largest unions today are primarily composed of public sector members—such as the American Federation of State, County, and Municipal Employees (AFSCME), the National Education Association (NEA), and the American Federation of Teachers (AFT)—or are unions with a substantial proportion of public sector members such as the Service Employees International Union (SEIU) and the International Brotherhood of Teamsters (IBT).

This chapter is concerned with the role unions play in public sector governance, but, in order to place their rapid rise in membership and influence within the proper context, the first part of the chapter will examine the rise and fall of unions in the private sector.

The Labor Movement in the United States

Even a cursory assessment of the history of the labor movement in the United States leads to the observation that

organized labor's legitimate role in industrial-labor relations has never been fully recognized or accepted. During the Industrial Revolution and its aftermath, United States' corporations opposed unionization on the grounds that it would lead to higher unemployment and increased market inefficiencies. During the late 1800s, industrialists sought to eradicate the voice of unions and regain unfettered control over their workers. Ironically, employers emulated labor by forming trade associations to eliminate the presence of unions from the workplace (Sloane and Witney 1991, 62). Corporations also sought to protect the capital tied up in large factories and remain competitive by paying as little as possible for workers.

Attempts by workers and unions to improve their economic well-being were strongly resisted by employers utilizing legal and extra-legal means. Adding to the grim labor-management environment was the tendency for strikes and other concerted work actions to descend into violence, resulting in the loss of lives and property on both sides. Laws enacted to curb the monopolistic practices of large companies, such as the Sherman Act (1890), were utilized by the same businesses as a club against labor unions (Ballot 1992, 25-26; 57-60).

During the 1920s and 1930s, the political climate in the United States changed dramatically (albeit temporarily) as witnessed by the passage of major pieces of pro-union legislation, including the Railway Labor Act of 1926, the Davis-Bacon Act of 1932, the Norris-LaGuardia Act of 1932, the National Industrial Recovery Act of 1933, and the National Labor Relations Act of 1935 (also known as the Wagner Act after its sponsor, Senator Robert F. Wagner of New York (Ballot 1992, 61-69)).

As a result of the passage of the Wagner Act, many labor agreements were negotiated over the next several decades that lifted unionized blue collar workers out of poverty and into the middle class. At its peak, organized labor represented one-third of American workers in strategic private sector industries at a time when manufacturing played an important role in the economy of the United States, and before deregulation set in on other heavily unionized sectors, such as transportation and communications. But labor's seat at the table of power was relatively short lived. By the mid-1970s its influence started to wane, and the percentage of represented workers in the country began a downward spiral which has yet to abate (McLennan 2007; H. Farber 2005).

The largest unions today are not comprised of industrial, blue-collar private sector workers, but are either exclusively or substantially public sector based. For example, the American Federation of State, County and Municipal Employees (AFSCME) claims 1.6 million members (AFSCME 2015, under About), whereas the International Brotherhood of Teamsters, once one of the largest primarily private sector unions in North America, claims 1.4 million members (IBT 2015, under Fast Facts). Perhaps more telling of the declining fortunes of private sector unions is the United Auto Workers (UAW). Once one of the premier industrial unions in North America, the UAW now has almost twice as many retired (over 600,000) than active members (UAW 2015, under About). At the end of 2014, organized labor represented less than 8 percent³ of the private sector workforce (BLS 2015).

The Decline of Private Sector Unions

Scholars attribute the decline of private sector union workplace penetration to a number of factors: deregulation of segments of the economy where unions had a strong presence, global economic competition, employer resistance,

³The number of union represented employees is slightly higher than the number of union members due to the legal requirement of having to represent every employee in a bargaining unit regardless of membership status. This is known as the "duty of fair representation."

lack of aggressive organizing efforts by unions, weakening legal protections, and the inability or unwillingness of union leaders to recognize and address the issue. A few scholars offer more global socio-political and historical reasons for the decline of union strength and relevance. They argue that the nature of the founding of the United States and subsequent dominant cultural norms in the country have favored and continue to favor individual and property rights over collective action and radicalism. These schools of thought are discussed and analyzed in the next several paragraphs.

Farber and Western (2002, 50-51) analyze the decline in union membership for the years 1973-1998 and credit the falloff to declining employment in traditional union-based workplaces and the lack of sufficient resources devoted by unions to new organizing drives. Their methodology consisted of applying mathematical equations to the decline by looking at union organizing activity and the differential in the rates of employment growth in union and nonunion workplaces (Farber and Western 2002, 34; 42). They found that union employment shrank each year by 2.9 percent, while nonunion employment increased an average of 2.8 percent. At the same time nonunion employment was rising, union organizing drives declined to historical

lows. Farber and Western estimate that if unions were able to organize 1 percent of the nonunion workforce each year, (the rate in effect in 1955) they would have reached a penetration rate of 17.8 percent in 1998, instead of a rate near 8 percent (Farber and Western 2002, 45). Just to achieve and maintain a representation rate of 12.25 percent, unions need to increase their organizing budgets by 500 percent, a nearly impossible task given that organizing generally consumes 20 percent of total union expenditures. Nor is it likely that unions will be able to surmount the existing deficit on organizing new members. Jobs in manufacturing, a traditional union stronghold, have declined due to the globalization of the economy, and jobs in other customary union strongholds, such as transportation and communications, have been deregulated making it more difficult for corporations to absorb or pass along the higher cost of union workers (Farber and Western 2002, 53).

Would changing the National Labor Relations Act (NLRA) alter the dynamic? Farber and Western are pessimistic about any potential legal remedies liberalizing the ability of unions to gain additional members. Unions would have to commit resources not just to organizing in new firms and companies but would also need to organize the current 100

million plus nonunion workers. Even a doubling of the current effort at organizing workers would only yield marginal membership growth, "it seems inevitable that union membership rate in the private sector will continue to erode." (Farber and Western 2002, 55)

The transition of the economy away from manufacturing and the lack of sufficient resources given to organizing are likewise alluded to as a factor furthering the decline of unions by Troy (2002, 64), who argues that structural changes in the marketplace and increased global and domestic competition have led to unions sliding into the "twilight zone." Troy (2002, 60; 72) also criticizes unions and their leaders for spending resources on political activity on behalf of the Democratic Party instead of organizing the unorganized, claiming that the AFL-CIO is, "increasingly transforming itself from a trade union Federation into a political Federation". While economic and market factors are beyond the control of unions, the emphasis on partisan politics is due to ineffective union leadership which has not resulted in membership gains, but has instead stigmatized unions as special interest groups and as the "Luddites of the new century" (Troy 2002, 73). Troy (2002, 72) labels it "Old Unionism" and agrees with other economists that the decline is permanent.

Resistance by employers and indifference by workers are also offered as causes for private sector decline in union membership. Kleiner (2002, 295) cites the fact that in 1990 employers in the United States spent over \$200 million annually on consultants and attorneys hired specifically to stop union organizing drives. Utilizing a qualitative comparative analysis of case studies of union organizing drives in Minnesota during the 1980s and 1990s, Kleiner theorizes that when management is determined to be union-free they violate the NLRA with relative impunity (Kleiner 2002, 305).

Flanagan (2007, 466; 487) agrees that employer opposition and weak response by the National Labor Relations Board (NLRB) is a factor for the decline of unions, but adds that it is only one of three reasons, since a vast majority of workers have not experienced management opposition in the heat of an organizing campaign. The two other interrelated determinants are: diminished organizing by unions, and a belief by workers that unions can no longer effectively represent their interests, with the latter being the prime causal factor. Why would workers disdain union representation? Flanagan credits high-performance human resource management policies as one reason; others include the passage of laws

protecting workers from the most egregious forms of abuse by management, and the weak resistance put up by unions to wage and economic concessions demanded by management (Flanagan 2007, 470). The latter causes nonunion workers to be less than impressed with the promised benefits of membership touted by union organizers. Flanagan (2007, 488) joins the other scholars cited above in predicting that the long term trend of decline and loss of power in the workplace is not likely to be reversed, even if labor is able to amend the NLRA to make union organizing easier to manage.

American exceptionalism and ingrained cultural norms are also given as causal factors for the waning fortunes of organized labor. Dray (2010, 8) cites historical scholarship to assert that no other industrial nation in the world has resisted unions as much as the United States. American corporations developed and became powerful ahead of centralized governments and the labor movement and came to dominate the course of events. As a result, "The right to property, to own and conduct a competitive business . . . were concepts held sacred-while the notion of an independent group of workers leveraging power, impacting economic and social policy, was not" (Dray 2010, 9).

In a similar vein, Lipset and Katchanovski (2002, 20) offer a socio-political explanation, attributing the decline of private sector union penetration in the workplace to the revival of libertarian and individualistic values in the United States. Employing a logistic regression analysis of five possible determinants of union membership, they found that the strongest predictor of decline is the social democratic scale which measures responses to eight values associated with a collective versus individualistic outlook. Lipset and Katchanovski (2002) argue that the United States is unique in having a national culture against social democratic feelings and in favor of individualism, which mitigated against strong union gains throughout the country's history, and from favoring the successful formation of a socialist union perspective, such as founding or supporting a Labor Party. During the depression of the 1930s the national mood shifted temporarily toward a social democratic type of collectivism which aided unions in their organizing drives. Successive periods of prosperity, however, have reversed the support for unions and brought about a return of libertarian individualistic norms, greatly weakening the desire of private sector workers to favor or to vote for unions (Lipset and Katchanovski 2002, 20-25). A variant of

this school of thought is offered by Godard (2009, 103) who applies a historical institutionalist perspective to explain the decline of private sector labor unions. Godard points to the fact that union coverage in the United States is lower than in the major industrialized nations of Europe as well as countries such as Japan, Australia, and Canada, to support his contention that the decline is a uniquely American phenomenon.⁴ Drawing on historical scholarship Godard applies an institutionalist perspective to assert that the United States from its very beginning followed a historical culture of individualism, frontier development, and Calvinistic religious settlement which manifested itself in large markets and large, economically powerful employers. Strong norms as to the sanctity of property and ownership rights also developed which became ingrained in our culture. Moreover, Godard states, these norms were not tempered by government or any economic elites, as they were in Europe and Canada (Godard 2009, 85). The relevance to the labor movement was significant. Internally, it led to the adoption of "business unionism" as the guiding light for the labor movement—focusing on bread and butter issues and eschewing left wing radicalism in an attempt to fit into the unique culture of the country (Godard 2009, 88).

⁴Comparisons from calendar year 2003.

Externally, it meant that the nation's political and economic culture was tilted against unions. Unions were able to succeed for a short period of time in the 1930s by claiming that their actions helped the economy. Once conditions improved, however, the argument no longer resonated. Thus, the decline was all but inevitable since labor was relying on legal mechanisms such as the Wagner Act to consolidate its power. Employers were able to circumvent and weaken the statute and organized labor was not able mount a successful counteroffensive.

Godard believes that the only way unions can stave off further decline is to recognize that there is no magic bullet (2009, 102). They need to accept that enactment of the NLRA was not the end game, but a temporary truce due to the catastrophic decline in the economy. Future survival and possible expansion of unions in the workplace is possible, according to Godard, but only if the labor movement shakes off its lethargy and recognizes that they must constantly wage a fight for representation on multiple fronts, using multiple strategies:

In the United States, effective union representation is contrary to powerful norms of employer unilateralism and hence generally requires both strong laws and alternative economic policies in support of it. Yet both of these are contrary to deeply ingrained legal norms and state policy traditions, any efforts

to realize them are readily undermined by employers, who have been able to thwart labor-friendly legislation and policy by playing on these norms and on widely held perceptions of unions as narrow interest organizations that cannot be trusted with more power. (Godard 2009, 101)

No review of the potential causes of the decline in union representation can be complete without including the role played by unions. For many years the AFL-CIO and most of its affiliated unions either were unaware of the problem or chose to ignore it. Indeed, George Meany, a former AFL-CIO president for over two decades (1955-1979) dismissed the problem by stating that the history of the labor movement has shown that even when organized labor comprised a tiny percent of the workforce they still accomplished great things. Meany's successor at the AFL-CIO, Lane Kirkland expressed total indifference to organizing the unorganized, even comparing them to, "hustlers [and] what have you" (Sloane and Witney 1991, 11). Kearny (2009) believes that among all of the factors cited for the loss of union power, the most compelling is the strategic blunders made by union leaders, including the failure to create a labor party, failure to devote adequate resources to organizing, failure to tell a compelling story, and the failure to adapt to a changing environment. "Ultimately the responsibility for strategic errors by union leaders must

be laid at the feet of unimaginative, reactive, and (all too often) self-interested and corrupt union leaders . . .” (Kearney 2009, 12).

Dray (2010), a supporter of unions, also points the finger at union leadership for contributing to their own decline by becoming complacent, tying their fate to the Democratic Party (which did not return the affection), and believing that the long struggle for workers’ rights had ended. When the tide started to turn against them, the best that organized labor was able to accomplish was to manage the decline by accepting wage concessions, early retirements, reduced benefits, and a bifurcated employment system where new members had far less job security or economic benefits (Dray 2010, 642-643).

Analysis of the research on labor’s decline

This limited review of scholarly research on unions in the private sector highlights a few common conclusions on the decline of union workforce representation in the private sector. Labor economists such as Farber and Western, Troy, and Flanagan applied the quantitative methodologies of their discipline and found several statistically significant reasons explaining the phenomenon. Farber and Western attribute the decline to the

growth of the nonunion sector of the economy and the lack of sufficient union resources devoted to organizing new members. While their data on union versus nonunion is compelling and accurate, a broader analysis of global economic trends and the impact of deregulation on key union heavy sectors of the United States' economy would have given added perspective as to why unions chose not to engage in organizing these employees.

Troy also supports the findings that the gap between union and nonunion employment will continue to grow and that unions have not devoted sufficient resources to organizing, seeking instead to involve themselves in political activity which has not paid off. Troy offers no data, only an assertion, that partisan political activity has not brought any tangible benefit. Further, Troy seems to have forgotten one of the key principles of the AFL-CIO when it was founded in 1881, that of "reward our friends and punish our enemies". Flanagan also applies a labor economist perspective finding that the strongest determinant for lack of unionization was the decline in worker demand for union representation. This finding can be seen as the flip side of Farber and Western's statement concerning the growth of employment in the nonunion sector.

Both findings are intuitive and statistically valid. Data on union workplace penetration contrasted with nonunion workers is not refuted by even the most ardent union proponent. While a purely quantitative analysis allows for an inductive conclusion based on data analysis, it can also leave the reader without proper context and framework (McNabb 2008, 12). A more comprehensive analysis of the concurrent growth in nonunion employment and the decline of employee demand for union representation would add additional clarity to the discussion. Is there another variable influencing both behaviors simultaneously that can explain the phenomenon? The articles discussed below offer additional explanations and tie together the various findings into a larger macro narrative.

The analyses provided by Dray, Lipset and Katchanovski and Godard utilize socio-political and historical institutionalist perspectives. Their overarching explanation—linking the foundation of the United States with a history of individualism and property rights, thus creating a national culture against collective action and radicalism—is intuitive and robust enough to include all of the more narrowly focused reasons given by other scholars. It goes a long way toward explaining the fierce resistance unions encountered during our nation's history, breached

only during the Great Depression, and only for a limited period. Indeed, by 1947, a mere 12 years after the enactment of the National Labor Relations Act, Congress passed the Taft-Hartley amendments to the NLRA removing first line supervisors from coverage, imposing conditions on union administration, and allowing states to enact right-to-work laws prohibiting mandatory union shops and involuntary payment of union dues. The historical-cultural argument also can encompass the reasons why nonunion employment grew much faster than union employment, and why organized labor chose to engage in business unionism, instead of forming a Socialist or Labor political party, to push for a radical redistribution of wealth. Godard's argument that unions saw the enactment of the NLRA as the end game instead of a limited truce in a relentless struggle offers insight as to why many union leaders either ignored or downplayed evidence of their shrinking influence, mistakenly believing that a labor-friendly president and Congress would enact changes to the NLRA and revive their sagging fortunes.

The Growth of Public Sector Collective Bargaining

While private sector collective bargaining declined, unions in government saw a rapid ascent in membership and

workplace penetration⁵. Practically nonexistent during the 1950s, they managed to meet and surpass the highest achieved representation rates of private sector unions. Indeed, by the early 1970s union representation of public employees expanded at such a rapid pace that more than one-third of state government and over 40 percent of local government employees were represented by unions (Nigro and Nigro 2000, 211). For the next several decades, unions continued attempts to organize new jurisdictions with mixed results. For the most part, they managed to hold on to their initial gains and scholars expected unions to continue to play a robust role in state and local government public administration well into the future (Kearney 2010, 90; Riccucci 2011, 203).

Given the absence of any NLRA-type legislation or federal regulation granting government employees the right to organize and engage in collective bargaining, most public employee activities prior to the late 1950s consisted of social clubs and civil service associations. The dominant methods of advocacy for members were to “meet and confer” with management and to use the political process in order to lobby for protections and improvements.

⁵While unions also exist in the federal sector, and also saw their influence rise roughly at the same time and same rate as state and local government unions, this dissertation will focus on the latter.

Union membership in the public sector was not a significant portion of either the labor movement or of government employees in general. Starting in the 1960s, however, there was an unprecedented expansion of membership in unions and of collective bargaining activity among government workers. Nigro and Nigro (2000, 211) characterized the growth of unionization that took place in state and local governments from 1962 to 1972 as "a tidal wave." In 1973, public sector union membership rates surpassed the private sector and continued to increase sharply so that by 1979 public union membership rates stood at 38 percent of the public workforce (Ballot 1992, 24).

By 2010, collective bargaining was allowed by 26 states and thousands of local governments for some or all of their employees. The union penetration rate for both state and local governments ranged from a high of 73 percent in New York State to a low of 8 percent in North Carolina, which is one of two states (the other being Virginia) that prohibits formal collective bargaining and the signing of binding labor contracts by state and local governments within their boundaries (Kearney 2009, 31-33).

Many plausible theories are offered to explain this phenomenon. AFSCME, one of the largest unions of public employees gives the following rationale:

In 1961, President John Kennedy issued Executive Order 10988, which legitimized collective bargaining for federal employees and helped create a favorable atmosphere for similar demands from all public employees. At the 1964 AFSCME convention, Jerry Wurf, director of District Council 37, was elected the new International President. Wurf campaigned on a platform of more aggressive organizing, pursuit of collective bargaining rights for public employees, and union reform/union democracy. A year later, a special convention re-wrote AFSCME's constitution and included a 'Bill of Rights' for members, a first in the American labor movement.

AFSCME began pushing hard for collective bargaining laws in states across the country. By the end of 1965, several states had enacted such laws and the union's membership soared to over 250,000. AFSCME and other unions achieved notable success at the bargaining table. They gained breakthroughs in living standards which greatly exceeded those achieved by non-union workers. (AFSCME, under Our Union: History)

Since AFSCME was a major beneficiary of the growth of public employee union activity, it is not surprising that it claims a large share of the credit for the phenomenon. Other observers also credit President Kennedy's Executive Order 10988 as the beginning of the period of government collective bargaining by creating a favorable climate for unions.⁶ Additional factors attributed with the acceptance of unions in government are said to be the rapid increase in public sector jobs during the 1960s, and that the new generation of public employees were more militant and less accepting of the lower salaries and benefits which existed

⁶While Kennedy's Executive Order 10988 may have created a favorable climate for state and local government collective bargaining, its impact on federal employees was far less sweeping since it prohibited wages and benefits from being negotiated.

at the time (Nigro, Nigro, and Kellough 2007, 200; Kearney 2009, 17-20). A number of private sector unions—such as the Teamsters, the Service Employees International Union (SEIU) and the Communications Workers of America (CWA)—opened their ranks to, and determinedly organized, public employees as a way to stem the private sector membership loss (Ricucci 2007).

Henry Farber (2005), attributes four economic structural reasons for why public sector unions were able to grow as private sector unions declined: (1) differences in the dynamics of employment, (2) differences in the nature of products, (3) differences in the roles that unions can play, and (4) differences in the incentives employers face. Each factor is examined below.

Differences in the dynamics of employment. Employment growth in the private sector is the result of the expansion of existing firms and the creation of new firms. Older firms, some of which may be unionized, sometimes shrink or go out of existence. The new forms are “born nonunion” and require “fresh organization” if they are to become unionized. In contrast, public employment growth is the result of population growth and the subsequent demand for new services. Since many jurisdictions are already unionized, any new employees will be unionized with little

or no organizing by the union, "thus, unions in the public sector can maintain membership levels with less organizing than is required in the private sector" (H. Farber 2005, 11).

Differences in the nature of the products produced. Farber credits the influence of the global economy as another reason why membership rates in the private sector continue to decline. "Unions in the private sector thrive when they can 'take wages out of competition' by ensuring that all firms in an industry face the same wage structure. Within the United States, this can be done through a vigorous effort to organize all firms, a strategy that is not feasible in the global economy" (H. Farber 2005, 11). Most public sector goods are not tradable and cannot be offshored. Even with the more recent trend to outsource certain public functions, unions can raise wages without the loss of employment, thereby making union membership more attractive.

Differences in the role that unions can play. This line of reasoning has been advanced by many observers and researchers, and is one of the arguments used by those who oppose the introduction and subsequent growth of unions in government. Unions in the private sector focus on collective bargaining as the method for improving their

members' economic status, and to gain some measure of control over the workplace in terms of seniority and a grievance procedure to equitably resolve contractual disputes. They do not use the political process to further affect their members' wages and other benefits. Public sector unions on the other hand, "have additional incentives and functions. In particular, the payoff to unions in the public sector of involving themselves in the political process can be substantial" (H. Farber 2005, 36), leading to increased benefits for members which also make union membership attractive to public employees.

Differences in the incentives employers face. This classic economic argument is also cited by those who oppose public sector collective bargaining. Farber notes that the rules of the marketplace govern the behavior of both management and labor in the private sector. Significant improvements in wages and benefits, which translate to higher costs and for one firm, can lead to a decline in the demand for those goods and services as long as other firms can step in and supply a substitute product. In the public sector, this bottom line discipline does not exist. Increases in wages and benefits can be met by increased taxes or cuts in employment which are usually not as severe as in the private sector. Additionally, "employers and

unions can work together through the political process to push through tax increases. Essentially, government taxing authority allows the financing of union compensation in a way that is not possible in a competitive market.” (H. Farber 2005, 13).

Farber’s analysis is elegant and intuitive and seemingly points to a permanent and dominant role by unions in state and local government administration. It is supported by traditional economic theory since the underlying assumption is based on the belief that government services are for the most part inelastic. In other words, consumers, (i.e., the taxpayer), will pay for these services no matter the price because they are essential to an orderly society, and there are no substitutes in the marketplace. Experience in the past 30 years, however, has shown that the public sector is not totally immune from market forces. Private sector firms offer services that were once the exclusive domain of government. Additionally, taxpayer revolts, starting with California’s Proposition 13 in 1978⁷, and continuing well into the 2010s, have demonstrated that there are limits to what the public is willing to pay for government services and public employee pay and benefits. Moreover, Farber has

⁷Also known as the People’s Initiative to Limit Property Taxation.

not tested his theories by any rigorous quantitative or qualitative methods, providing another reason why public policy and administration researchers should be engaged in addressing the issues brought about by public sector unionization and collective bargaining.

Criticisms of Public Sector Collective Bargaining

During the explosive period of growth of unionization in government (1962-1972), some voices were raised against the introduction of a private sector model of labor relations into the public sector. Their arguments can be divided into three themes: (1) public sector collective bargaining diminishes governmental sovereignty, (2) public sector collective bargaining lacks the economic discipline of the private sector marketplace, thereby extracting large increases in wages and benefits, and (3) public sector collective bargaining is a zero-sum game whereby union gains come at the expense of other groups with an interest in policy outcomes (see Figure 1 below for a summary of some of the arguments articulated by Denholm). For the most part, these opinions were not persuasive in halting or reversing the spread of unions and collective bargaining in the public sector at the time they were voiced, but some of them have been resurrected in more recent attempts to roll

back public employee economic benefits and the ability of unions to effectively represent state and local government workers. Edwards (2010), for example, repeats the charge that unions in government inhibit management efficiency and force taxpayers to pay more for public services. Edwards also points out that public sector unions spend millions of dollars to influence the outcomes of elections and ballot referenda, giving them a powerful voice in shaping policy at all levels of government. The only way taxpayers and citizens can level the playing field is to follow the lead of Virginia and North Carolina and expressly prohibit mandatory collective bargaining (Edwards 2010, 3). McGinnis and Schanzenbach (2010) make similar arguments, asserting that public employees not only unjustly enrich themselves by having a "special relationship" with the government that sets their salaries and benefits, but that they also create distortions in the public policy arena due to the concentration of power stemming from their legal status and political muscle (McGinnis and Schanzenbach 2010, 7-10). To level the playing field, McGinnis and Schanzenbach recommend radical change including the termination of statutes giving unions the right to collectively bargain and collect dues, in addition to those that confer the

Argument 1. Sovereign v. Free Contract

Government – the public sector – is sovereign, and no other institution or enterprise in our society is sovereign. Sovereignty is the power to use force – to compel. Under our democratic system only the government is sovereign. Governmental sovereignty is derived from popular sovereignty which we as citizens give to government, within constitutional limits through our elected representatives, in the interest of order, security, and the public good.

Government's sovereignty is obvious in such things as compulsory school attendance laws, in its power to collect taxes and in its power to violate personal and property rights in the public interest.

All economic and social activity in the private sector is governed by free contract. A free contract can only exist when both parties want one. Individuals cannot be compelled to buy the product of a particular company. Businesses cannot be compelled to join a business or trade organization. Support of churches is entirely voluntary. The list goes on and on.

Sovereignty is misunderstood. Many think of it in terms [sic] of the "divine right of kings." It is useless to argue that sovereignty [sic] is an outdated concept. Sovereignty [sic] is not something that government can choose to have. A government which is not sovereign is a paradox. No matter how pluralistic a society becomes, it is the sovereign nature of government which guarantees the order necessary for the participation in that pluralism by individual citizens.

It may be argued that there are compulsory public sector bargaining laws in many states and that public order has not broken down. This argument misses the point. Every time that we elect representatives to run the public's business and they cannot carry out their programs because of opposition from public sector unions, sovereignty has broken down and we have all lost.

Argument 2. Political v. Economic

Public sector decisions are political decisions no matter how great their economic impact. Government makes decisions every day that have profound economic consequences, but these decisions are based on political, not economic, considerations. In the public sector,

decisions that are politically popular but economically ruinous can get you reelected.

Decisions that are economically sound but politically unpopular are ruinous.

Private sector decisions are economic decisions no matter how great their political impact. In the private sector, economic decisions that have bad political consequences can make you unpopular, but decisions that are politically popular and have bad economic consequences can put you out of business.

Argument 3. The Public Interest

In order to fully appreciate the case against public sector unionism, it is important to understand why public sector collective bargaining is contrary to the public interest.

To do this, we must determine what is the public interest in public employment. This may prove to be many things to many people, but there should be universal agreement that it includes the following:

1. A peaceful, stable employer-employee relationship;
2. Protection of the rights of all public employees;
3. Protection of the right of the people through their elected representatives to control government policy and the cost of government;
4. Providing governmental services in the most efficient and orderly manner possible.

Based on any objective standard, collective bargaining, as it has developed in the industrial or private sector of America's economy, does not enhance any of the above in the public sector.

Figure 1. Arguments against public sector collective bargaining.
(Denholm 2011)

right to strike or utilize mandatory arbitration (McGinnis and Schanzenbach 2010, 12).

Public Unions and Periods of Retrenchment

Despite their relatively swift growth and incorporation into state and local government public administration, labor unions have witnessed a number of periods of retrenchment and decline. Indeed, their first setback, which occurred in 1973, has many of the characteristics of the impediments faced by public sector unions during the early part of the current decade. Nigro and Nigro (2000, 211) described it as "the deepest economic decline since the Great Depression." Public sector unions found it difficult to obtain meaningful economic gains at the bargaining table and saw an end to membership growth; unions faced hostility from the public and a resistance to any tax increases. Politicians were advised to bash unions as a winning strategy (Nigro and Nigro 2000, 211). In some ways the predicament and the anti-union rhetoric which took place almost 40 years ago sounds disconcertingly contemporary:

The deteriorating financial position of state and local governments . . . led to a decline in the deterioration of political influence of public sector labor unions . . . Even politicians who earlier had been elected with labor support found it possible to take a hard line, fiscally conservative approach to collective bargaining with their public employees... Democratic governors...and the mayors of such cities as New York, Seattle, Boston and Philadelphia all adopted positions that effectively reduced the political

access or influence of public sector unions that had helped to put them in office. (Lewin et al. 1988, 9)

The decade of the 1980s brought an additional period of uncertainty and retrenchment for public sector unions. The driving factors included another economic recession, the beginning of the end of generous federal aid to state and local governments, and the unsuccessful result of a strike by the Professional Air Traffic Controllers Association (PATCO). Although the PATCO debacle played out at the federal level, its symbolism cascaded throughout the public sector labor realm: an illegal strike conducted by federal employees crushed by President Ronald Reagan (Ballot 1992; Northrup 1984). Labor unions suffered a public relations blow, and some managers at the state and local level sought to emulate President Reagan's tough stance. Union leaders in government were on the defensive and focused on preventing an erosion of their members' wages and benefits as well as loss of jobs through privatization and budget cuts (Nigro, Nigro, and Kellough 2007, 202).

The 1990s and 2000s also saw threats to the role and influence of public sector unions. Continuing economic woes forced jurisdictions to look for ways to reduce costs while maintaining services to their residents.

Privatizing services previously performed by public employees became the new norm. Terms such as "downsizing", "rightsizing" and "reengineering" became part of the public lexicon, along with reductions in force of government employees (Sulzner 2001, 114).

States such as Florida, New Mexico, Indiana, Colorado, Kentucky, and Missouri (see Kearney 2010; Hays and Sowa 2006) restricted existing collective bargaining rights for their employees. Other jurisdictions pushed for and succeeded in receiving union concessions on employee salaries and benefits. There was a small, cumulative, negative impact on union workforce penetration by the late 2000s. Representation and membership rates declined from 1994 peaks of 44.7 percent for local governments and 38.7 percent for state governments, to 40.7 percent and 36.8 percent respectively in 2008 (Kearney 2010, 94). The most heavily unionized government occupations—teachers, firefighters and police officers—saw a long-term, marginal decline in workforce penetration. Starting in 1983, union coverage of teachers went from 74 to 66 percent, firefighters declined from 86 to 70 percent and police officers dropped from 64 to 59 percent in 2004 (H. Farber 2005).

What was the cumulative impact, if any, of these negative periods to public sector unionism? The literature seems to point to a state of relative stability. While unions and collective bargaining took some blows, no knockout punch was delivered. After the initial retrenchment caused by the 1973 recession, unions went on to achieve a "mild resurgence" in the early 1980s (Lewin et al. 1988, 9). A review of the status of public sector bargaining in the early 1990s by Klingner found that unions lost members during the years 1979-1981, but by the end of the 1980s they managed to regain their high point of workforce penetration: 30 percent of state employees and 43 percent of local government employees (Klingner 2007, 330). Kearney (2010, 89) found that, despite the slowing of union organizing successes in the 1980s and 1990s, public employee unions and collective bargaining managed to "thrive in a majority of the states". Indeed, by 2002, thirty-nine states had granted some or all of their public employees the right to collectively bargain (see Bennett and Masters 2003, 535). Mareschal (2009, 304) studied the legal and political environment of public unions during the early 2000s and concluded that despite some setbacks in both arenas, there was cause for optimism since unions won far more political battles than they lost.

Other researchers echoed this theme. A symposium held in 2003 to look at the prospects for public sector labor relations over the next 20 years was mostly positive, predicting that unions would once again begin to gain new members by winning organizing drives, and that they would continue to exercise political clout and win job protections against the privatization of public sector jobs (Craft, 2003). In the same manner, none of the scholars who study unions in state and local governments foresee the demise of public sector collective bargaining and union activity. Nigro, Nigro, and Kellough (2007, 202), acknowledge that unions in state and local governments are operating in a supremely challenging environment, but believe that their presence is an assured and accepted part of public administration. Kearney (2009, 342) recognizes that the robust gains made at the bargaining table when conditions were favorable were not likely to be repeated and that unions will have to reinvent themselves to remain relevant; but, a scenario where they would lose power and influence similar to the private sector loss is not foreseen. "Public employee unions are now, and will remain in the future, forces to be reckoned with within the U.S. politics and public administration" (Kearney 2009, 23).

Review of research on wages and public sector unions

Does collective bargaining always result in higher salaries and economic benefits for unionized employees? The reflexive answer would be an emphatic "yes". After all, one of the major assertions made by unions during organizing drives is their ability to gain higher salaries and other economic benefits through collective action. The AFL-CIO maintains that unionized workers enjoy a 27 percent wage advantage over non-unionized workers (AFL-CIO 2014, under Learn About Unions: Collective Bargaining). Research focusing on private sector unions during their peak power era suggests that they raised members' wages by an average of 15 to 20 percent, and in some industries as high as 30 percent (Rees 1989, 72-75; Blanchflower and Bryson 2007, 80). The wage advantage continued even as unions continued to shrink in terms of workforce representation. In 2001, private sector union representation declined to 13 percent of workers; but, the wage gap still averaged 17 percent, with a low of 3 percent for those in jobs requiring a college education to a high of almost 40 percent for construction workers (Blanchflower and Bryson 2007, 84). The potential of public sector unions duplicating this phenomenon was a concern especially during the first decade of the growth of unions and collective bargaining in

government. At the height of the historic large-scale unionization of public sector employees, two legal scholars, Wellington and Winter (1969, 1126-1127) theorized that collective bargaining in local government would permanently tilt the playing field towards unions in terms of public employee economic gains. They argued that the imposition of a private sector model of industrial relations, without recognizing the fundamental differences between the two sectors, would lead to the institutionalization of union power at the expense of other competing groups in the areas of resource distribution and the delivery of public services. Similar to the arguments made by economists, Wellington and Winter noted that the absence of market forces and the relative inelasticity of public services would cause a jurisdiction to grant the unions' economic demands, especially if the power of competing groups is weak relative to the influence of organized labor in the public sector. Their argument can be summed up as questions of access and absence: access to the political process by public sector unions, coupled with the absence of a robust permanent political counterbalance to union demands, and the strong desire by the residents and government leaders of a jurisdiction to avoid strikes and

work actions at all costs, points to a potential imbalance of power in favor of public sector unions.

Intuitive and persuasive as this argument may appear, the evidence of public sector union employees unjustly enriching themselves at the expense of other stakeholders is mixed at best.⁸ A number of historical and more contemporary research studies (discussed below) on the resource allocation assertion found that the conclusions reached by Wellington and Winter are not always manifested.

A quantitative approach was applied by Freund (1974) to discern the strength and influence of markets and unions on local government salaries. Among the variables in his equation were: average weekly public sector earnings, work force composition, unemployment rate, nongovernmental wages, the extent of unionization in the jurisdictions, the presence or absence of binding arbitration, and legal prohibitions against public sector strikes and public sector bargaining, as well as public sector political activities. Several multiple regressions were run to test the strength of the market and the presence of unions and collective bargaining on government salaries.⁹ For the

⁸It should also be noted that Wellington and Winter offered no data to support their hypothesis.

⁹The basic sample size consisted of 245 cities with a population of 50,000 or more. Data limitations reduced the regression sample to 40-80 cities depending on the variable being tested.

period under analysis (1965-1971) Freund found that in cities where the penetration rate of unions was 50 percent or greater there was a weak effect on wages, but local and national market forces were far more likely to be "significant determinants of earnings changes" for the employees of the jurisdiction (Freund 1974, 398). Another significant variable was the jurisdictions' demand for labor; that is, the expansion of the municipal workforce also positively influenced the changes in wages. Neither the use of strikes, nor the availability of political activity on the part of unions showed a strong relationship to wage increases (Freund 1974, 401). Freund also tested Wellington and Winter's proposition that collective bargaining in local governments would show a strong influence on wage increases by regressing the budgeted changes for salaries during the years 1965-1971 against a set of public sector union variables. He found a weak relationship between union membership and wage increases: jurisdictions where the penetration was 60 percent or more were found to budget three percent more for employee salaries than in a jurisdiction with no unions (Freund 1974, 403).

Robinson (1974) utilized multiple regression analysis to test the impact of unions and collective bargaining on

the salaries of police officers and firefighters in cities of varying sizes. Part of the independent variable included the "opportunity cost" of being a public safety employee, the degree of unionization, and the inclusion of the largest city in each state as a variable. The dependent variable consisted of the entry level and top of grade salaries for both occupations. Robinson found that in the beginning of collective bargaining in the early 1960s the union wage effect of entry and top of grade salaries was between 4 and 6 percent. By the end of the decade, however, police unions outstripped firefighters with a wage effect of nearly 15 percent (Robinson 1974, 268). This impact was most pronounced in large metropolitan areas, especially cities that contained the largest population in the state.

Bartel and Lewin (1988) utilized an econometric model to not only look at the wage impact caused by the presence or absence of unions but added the variable of collective bargaining to determine its impact on municipal police salaries. The sample included 215 municipalities with a population of at least 25,000. Variables included median family income, size of jurisdiction, population density, median value of housing, dummy variables for geographic location and type of government (mayor or professional city manager). Ordinary least squares estimates showed that the

presence of a contract, meaning that collective bargaining is taking place, increased starting salaries by 6 percent, and that the average police salaries across represented ranks was higher by 3.9 percent, which was not statistically significant (Bartel and Lewin 1988, 498). Bartel and Lewin also conducted a two stage least squares (TLS) analysis which assumed an endogenous approach, that police unions and police wages are simultaneously determined. The value of a contract increased considerably, showing that collective bargaining resulted in salaries which were 14 percent higher than jurisdictions without a police labor agreement (Bartel and Lewin 1988, 499). Incorporating fringe benefits into the equation shows an even greater union effect on retirement and other benefits. Cities with a low wage base were more likely to have a contract, than a high wage city, leading the researchers to conclude that the lower the police wage, the greater the demand for police unionization, a finding which would have not been detected if only ordinary least squares was utilized (Bartel and Lewin 1988, 500).¹⁰

¹⁰An interesting side result of the econometric model utilized by Bartel and Lewin was the finding that police collective bargaining laws were more likely to be present in jurisdictions with a professional city manager. While they admit that this result was unexpected, no further research or analysis was conducted on this phenomenon (Bartel and Lewin 1988, 500).

These wage studies, conducted during the first two decades of the ascent of collective bargaining in local governments, produced mixed results, perhaps illustrating the complicated nature of unions and public sector collective bargaining and its nexus to public administration. At least in the early stage of union activities, collective bargaining as a tool for increasing public employee salaries was not seen by scholars as a significant method of increasing wages. The presence of employee unions, and their willingness to utilize political power, on the other hand, was seen as a crucial variable in wage determination. Fogel and Lewin's (1974) conclusion that public employers pay more than the market for less skilled jobs and less than the market for higher level positions is attributed, in part, to the nature of political forces affecting public sector wage determinations. Freund's research on wages and public employees found that the strongest factor in salary setting was the demand for labor. This finding should not be surprising given that the data looked at the years 1965-1971, a time of rapid expansion for state and local governments in the United States, when jurisdictions were competing against each other and the private sector for employees. Additionally, though Freund downplays the

results, his research showed that jurisdictions with a 60 percent union membership rate resulted in a 3 percent positive wage effect. One can quibble that this amount is negligible, but it still demonstrates a small union wage effect for public employees.

By the early to mid-1980s, most state and local government employees' contract settlements contained increases exceeding gains made by unions in the private sector. A comparison of public and private collective bargaining settlements involving at least 1,000 employees for the years 1982-1986 compiled by the Bureau of Labor Statistics (BLS) and analyzed by Lewin (Lewin *et al.* 1988, 438) shows that public sector employees received larger increases than unionized private sector workers, ranging from a positive difference of 2.2 percent to 4.4 percent in total compensation.¹¹ An analysis of the changes in the BLS compiled Employment Cost Index¹² (ECI) for the same time period demonstrates that, on the whole, public sector employers ECI number was higher than the private sector, in some instances by a full two percent (Lewin *et al.* 1988, 437). Whether unions or collective bargaining played a role in providing a "wage effect" is less clear. Conversely, a

¹¹Percentage differences calculated from labor contract data compiled by BLS and reported in Lewin (1988, 438).

¹²ECI measures total employment costs, including wages and benefits provided by the employer.

summary of 29 published studies (Lewin *et al.* 1988) concerning the influence of unions on public employee wages covering 1961-1983 found 21 instances where the researchers attributed "significant" wage impacts, ranging from a low of 1.8 percent for public school teachers to a high of 25 percent for blue collar workers. Organized public safety workers were consistently at the higher end of the wage scale (Lewin *et al.* 1988, 488-489). The link between the unionization of public safety workers (especially police officers and firefighters) and a positive wage effect was also confirmed by two relatively recent doctoral dissertations, described below.

Putchinski (2005) surveyed jurisdictions within the state of Florida to ascertain if the presence of a union has an impact on police related expenditures. Unionization was the dependent variable, while the independent variables consisted of total police expenditures, personal services expenditures, and capital outlay police expenditures (Putchinski 2005, 128). A number of demographic, financial, and law enforcement control factors were used to isolate the effect of the dependent variable. Data from 257 Florida jurisdictions, containing 58 percent union represented police departments was used to test all four hypotheses by the use of multivariate linear regression analysis. The

results showed a significant positive relationship between the presence of unions and local government expenditures related to police, with the exception of capital outlays (Putchinski 2005, 165-180).

Another more recent dissertation analysis concerning the impact of police unions was conducted by Eagan (2008). This study focused on 130 medium and large police agencies defined as having 100 or more sworn officers. Four hypotheses were posited:

1. H01: Adjusted for local cost of living difference, there will be no difference between wages of police officers who have collective bargaining rights and those who do not.
2. H02: Adjusted for local cost of living difference, there will be no difference between the value of fringe benefits of police officers who have collective bargaining rights and those who do not.
3. H03: In the municipalities considered in this study, there will be no difference in police wages between these municipalities when adjusted for median household income, median housing costs, crime rates, and unemployment.
4. H04: In states where public safety collective bargaining is allowed, there will be no difference

in police wages between those jurisdictions that mandate dispute resolution and those jurisdictions that do not mandate dispute resolution.

The independent variables included the presence of collective bargaining, local unemployment rates, local household income, median housing costs, local crime rate and two dummy variables: the presence or absence of right to work laws in the jurisdiction, and whether the state in which the department was located was deemed to encourage public sector collective bargaining. The dependent or criterion variable was police compensation (Eagan 2008, 43). Police salary data from 2004, collected by a private firm was utilized to test the impact of these variables.

Utilizing stepwise and multiple regression analysis to test for the impact of unions on police wages and certain fringe benefits, Eagan found that the presence of a union had a significant impact on salaries at the entry level. There was a smaller positive impact at the maximum step, but this was not considered significant (Eagan 2008, 54). In terms of fringe benefits, Eagan found partial support and partial denial of the null hypothesis; police officers collective bargaining jurisdictions had a higher portion of their health insurance premium paid by the employer, but the effect of collective bargaining on annual leave after

19 years of service was not significant (Eagan 2008, 57). Other variables affecting police pay and benefits in a unionized environment included: median housing costs, community household income, and crime rate. Interestingly, the study also found a positive relationship on salary for local government police officers operating in states where the official policy supports collective bargaining. The only variable which did not have a significant impact on wages and salaries was the presence or absence of binding arbitration as the final step in a collective bargaining impasse process (Eagan 2008, 62).

Lewin cautions that while unions are quick to take credit for improving wages and benefits there may be other environmental forces at play, such as the local business or economic cycle (or political lobbying) which may not be readily visible, but may have a strong influence on bargaining outcomes (Lewin *et al.* 1988, 434). Evidence supporting the theory linking public employee economic improvements to factors other than collective bargaining comes from two longitudinal case studies. Horton (1988) examined New York City's operating budget expenditures on the cost of labor, its share of total expenditures, and average employee increases for the years 1970 to 1985. From 1970 to 1975 as New York City's economy grew, labor's share

of the budget and average compensation and wages also expanded, followed by a reduction of expenditures in all three areas for the next eight years as the city's economy shrank. From 1983 to 1985 New York rebounded economically and labor's fortunes rose along with it. As a percentage of the total operating budget, labor's share increased by 23.3 percent from 1970 to 1975, fell by 16.3 percent from 1975 to 1983, and again increased by 10.6 percent from 1983 to 1985 (Horton 1988, 475). Horton's analysis suggests that during times of an equilibrium or surplus between local government revenues and expenditures government officials tend to loosen the jurisdiction's purse strings and unions are able to make gains, both in improving the individual worker's salary and benefits and in the aggregate percentage of the budget devoted to employees. The reverse is also true. Labor's share of expenditures tends to decline during periods of fiscal retrenchment, often in the form of low or no salary increases, and in the reduction of the number of employees on the payroll (Horton 1988, 478-479).

A similar but more in depth case study methodology was employed by Katz (1984) using the City of San Francisco's expenditures on employees from 1945 to 1976 to determine the power and role of unions in setting salaries. Until

1972, unions representing various groups of municipal employees did not have formal bargaining rights but relied upon political lobbying and building electoral alliances to advance their agenda (Katz 1984, 26). The preferred method was to enact changes to the city charter, which called for salary increases based on a prescribed formula or linked to salaries of private sector craft workers. This arrangement favored four groups' unionized employees—police officers, firefighters, transit operators and craft workers—at the expense of general government employees. Base wages for the four groups of unionized employees increased by 26 percent from 1970 to 1976, while the salaries for other municipal employees decreased 12 percent during the same time period due to unusually high rates of inflation (Katz 1984, 41). Katz attributes the outsize gains made by the four groups to the political clout exercised by their unions, and not to any economic gains made as a result of formal collective bargaining (Katz 1984, 188). Indeed, when they utilized the ultimate weapon in their arsenal, a strike, they failed to achieve their stated gains. Residents of San Francisco endured a general strike by municipal employees in 1970, a miscellaneous employee strike in 1974, a police and firefighters strike in 1975, and a strike by craft workers in 1976. In each of these actions, the unions involved suffered

a backlash from the public and saw the enactment of voter-backed referenda to curb their power. Katz suggests that researchers should focus on the political channels utilized by public sector unions rather than the tools granted to them under a formalized collective bargaining structure, since that is where their power and influence are effective (Katz 1984, 198). He also challenges Wellington and Winter's claim concerning the excessive influence collective bargaining would confer to public sector unions. "Public employees did not get their way via either strikes or collective bargaining, nor did their strength derive from an inelastic demand for their services. Rather, the unions succeeded because of their ability to pass favorable ballot measures and then lobby to insure favorable interpretation of charter ordinances." (Katz 1984, 198)

CHAPTER 3

RESEARCH METHODOLOGY

Introduction

Chapter 1 articulates and identifies an emerging issue in the field of public administration, namely the attempt by a number of state and local governments to either eliminate or substantially reduce the power and impact of public sector labor unions within their jurisdictions. The chapter also cites the continuing decline of organized labor in private sector industrial relations, from representing approximately one third of the workers and employees in the United States in the mid-1950s to representing less than eight percent in 2014. Whether public sector unions remain an integral part of the landscape of public administration or begin to experience the same decline as their private sector counterparts should be a part of a robust investigation and discussion among researchers and scholars of public administration. This is an important area of inquiry, but as discussed in Chapter 1 and further elaborated in the review of the literature (Chapter 2), scholarly analysis of the role performed by unions in local government is scarce.

This research project attempts to correct that shortcoming and contribute to the body of knowledge by seeking an answer to the question: *what is the impact of statutorily mandated collective bargaining on local government?* More specifically, what effect does public sector collective bargaining have on employee economic benefits, job security-due process rights, as well as on management's ability to exercise its obligation to efficiently and effectively manage the enterprise? The research design utilized to answer this question will be the comparative case study method. This technique of inquiry is used extensively in public administration (McNabb 2008, 282) and is methodologically appropriate to address descriptive questions, especially when the phenomena being analyzed is a contemporary event outside the researcher's control (Gray 2004, 124; Yin 2009, 8; Creswell 2003, 183). A comparative case study allows the researcher to examine in detail the context of two or more instances of a specific phenomenon. It is designed to get the "thick" description of a phenomenon found in a single case, while, at the same time, discovering similarities and patterns across the cases. In terms of this dissertation, a comparative case study (a case study comparing two similar local governments) allows the researcher to ascertain if

the outcomes mentioned above—employee financial gains and managing rights—are affected by statutory collective bargaining. As elaborated in this chapter, the two jurisdictions in the study, Montgomery County, Maryland, and Fairfax County, Virginia, are similar in a number of independent variables: resident demographics, socio-political cultures, public budgetary priorities; they are divergent, however, in their approach to public sector union collective bargaining. Thus, they are well suited to the research challenge cited by Norma Riccucci to conduct case studies of one or two jurisdictions to, “inform the body of knowledge” and “help build theory in public sector unionism.” (Riccucci 2011, 206).

Comparative Case Study Design

Gray (2004, 33) cautions researchers that all known methods of inquiry into real world problems have strengths and weaknesses. Case studies, for example, can be difficult to replicate and validate, and the analysis may be comprised of long descriptive factors while giving short shrift to quantitative methods. Since the real world is not a laboratory pure experimental designs are not feasible either, especially in social science research. Case study methodology, however, is ideal when a “how” or “why”

question is being asked about a contemporary phenomenon and the researcher cannot control or manipulate the variables being examined (Gray 2004, 124; 149). Yin (2009, 17-19) argues that in depth research into a set of events within its real life context, utilizing multiple sources of evidence as practiced by the case study method, allows the researcher the flexibility to incorporate additional methods and data thus avoiding the limitations found in other methods. Stake (1995, 8) advises that the case study method allows for "particularization, not generalization." It permits us to know the case well, understand its uniqueness, and understand how it may be different from other cases. Perhaps the best argument in favor of utilizing the case study method comes from David E. McNabb (2008, 257) stating that it can serve, "as examples of what a public administrator ought not to do, as well as what should be done." McNabb also maintains that the case study method has become an accepted part of the public administration scholar's research approach due to its flexibility and utility in allowing the researcher to gain greater insight into an observable fact and therefore contribute to a better understanding of the topic.

Within the case study methodology are three related approaches that can be employed: intrinsic, instrumental,

and collective (McNabb 2008, 289; 298). The intrinsic case study allows the researcher to gain an understanding of the subject being studied, while the instrumental case study method allows the researcher to gain "greater insight into a specific issue." (McNabb 2008, 298). Both of these approaches rely upon analyzing a single case, and therefore would not be sufficient to answer the research question. The most suitable approach, therefore, is the third case study category, the collective, or multisite, method which calls for more than one case to be studied and analyzed. In the field of public administration this variant of the case study approach is also known as a comparative case study (Yin 2009, 19). It allows the researcher to examine in detail the context of two or more instances of a specific phenomenon. Yin also states that a methodology in which the researcher deliberately selected two cases offering contrasting situations the findings can, if supporting the hypothesized contrasts, "represent a strong start toward theoretical replication . . . vastly strengthening the findings compared to those from a single case alone . . . " (Yin 2009, 61).

Therefore, the multisite case study approach to the research question cited above appears to be the most appropriate methodology to employ. The contrasting

situation cited by Yin is the presence of legally required public sector collective bargaining in Montgomery County, one jurisdiction under study, and the legal prohibition of public sector collective bargaining in Fairfax County, the second jurisdiction under study. Additional factors supporting methodological choice for comparative case study design can be the multiplicity and myriad labor relations methods employed by local governments in the United States. Under our federalist form of government, each state and in some cases each political subdivision within a state, is able to fashion a statute or regulation limiting the extent to which its employees may engage in labor union activities. The resulting array of frameworks can be daunting to organize into a manageable research effort. A comparison between a bargaining jurisdiction and a non-bargaining jurisdiction, nevertheless, would begin to address the comments made by Lewin *et al.* (1988), Riccucci (2011), and Kearney (2009) to allow the researcher to ascertain the added value of union membership; that is, whether union represented employees receiving added benefits and job protections not found among employees where bargaining is not present?

The result of the analysis can also offer a glimpse of the long term prospects for unions by seeking an answer to

the most basic reason for their existence: do unions improve the compensation, benefits, and working conditions of represented employees? Ultimately, if unions are unable to produce benefits for their members, they may not be able to justify collecting membership dues or agency fees from them. Should this be the case, it can be theorized that their long term prospects may follow the same trajectory as their private sector counterparts. A valid and methodologically rigorous qualitative research approach, therefore, is to compare two similarly situated jurisdictions utilizing primarily qualitative techniques to determine if unions have indeed added value to their members, and to determine collective bargaining's impact on the administration of public services. Comparing data on the independent variables (employee salaries, benefits, job protections-due process rights and management prerogatives) between two comparable local governments, one with collective bargaining and one without, allows the researcher to determine the impact of the dependent variable (the presence of legally mandated collective bargaining) on the independent variables. The data collection and analysis is limited to uniformed public safety personnel (police officers, firefighters and emergency medical service employees, deputy sheriffs and

correctional officers) enabling the researcher to compare similar job functions and responsibilities.

**Montgomery County, Maryland and Fairfax County, Virginia:
Are they Comparable Jurisdictions?**

Why compare county governments instead of urban cities? During the emergence of public sector collective bargaining in the early 1960s public policy and public administration research tended to focus on metropolitan city governments. During that era cities were assumed to be the economic engines and population centers of their region, thus justifying the attention given to them. Indeed, one of the very first scholarly studies of public sector labor relations conducted by the Brookings Institution focused primarily on metropolitan urban cities.¹³ Within the last several decades large county governments have, in many respects, morphed into urban-like jurisdictions, assuming many of the functions formerly attributed to city governments. While a full-fledged review and analysis of the shift undertaken by many county governments is outside the scope of this dissertation, available data tends to support this supposition. The National Association of Counties (NACo 2013) reports that

¹³The series was called Studies of Unionism in Government, and was led by David Stanley.

county governments employ more than two million workers at all professional levels. NACo also claims that during the years 1967-1997 county employment increased by nearly 37 percent, and monthly payroll costs increased by over four million dollars or 386.35 percent (NACo 2013).

Data compiled by the Census Bureau on large cities and counties in the United States and analyzed for this study confirms that counties have surpassed cities in terms of employee growth. Information on employment and payroll from 1999-2009 was gathered by the Census Bureau for the top 80 cities and counties by population. During this ten-year period, total employment by large city governments grew 28 thousand individuals or slightly more than 0.2 percent; monthly payroll increased from \$4,319 million to \$5,863 million, a gain of \$1,544 million or 35 percent (US Census Bureau 2010, table 467). At the same time, employment by the top 80 county governments went from 875 thousand to nearly one million workers, for a gain of 124 thousand or 14.17 percent. Monthly payroll increased from \$2,764 million to \$4,712 million over the same period, an increase of nearly two million dollars or 70.44 percent (US Census Bureau 2010, Table 468). The 2010 Census also reported that almost two-thirds of the nation's counties gained residents from 2000-2010 with the largest gains occurring in the

metropolitan areas (US Census Bureau 2011). The ten largest cities in the United States grew an average of 4.47 percent from 2000-2010, while the ten largest counties grew an average of 7.92 percent during the same ten years (US Census Bureau 2011).

Demographic studies (Singer 2013) indicate that immigrants to the United States now settle in suburban county jurisdictions and not in cities as was the norm. In 2010 over half of the immigrants from outside the U.S. settled in suburbs, while only 33 percent resided in central cities, a trend which started in the 1970s as jobs and opportunities moved to suburban county jurisdictions (Singer 2013, 87-89). Thus, in the major categories of population growth, employment and payroll growth, as well as immigrant population settlement, large counties have taken on many of the functions and characteristics of urbanized jurisdictions. Figures 2 and 3 highlight the rate of growth in selected characteristics among large counties and large cities.

Why these two local governments?

The argument presented thus far makes a case for analyzing large county governments instead of cities in terms of the impact of statutory collective bargaining.

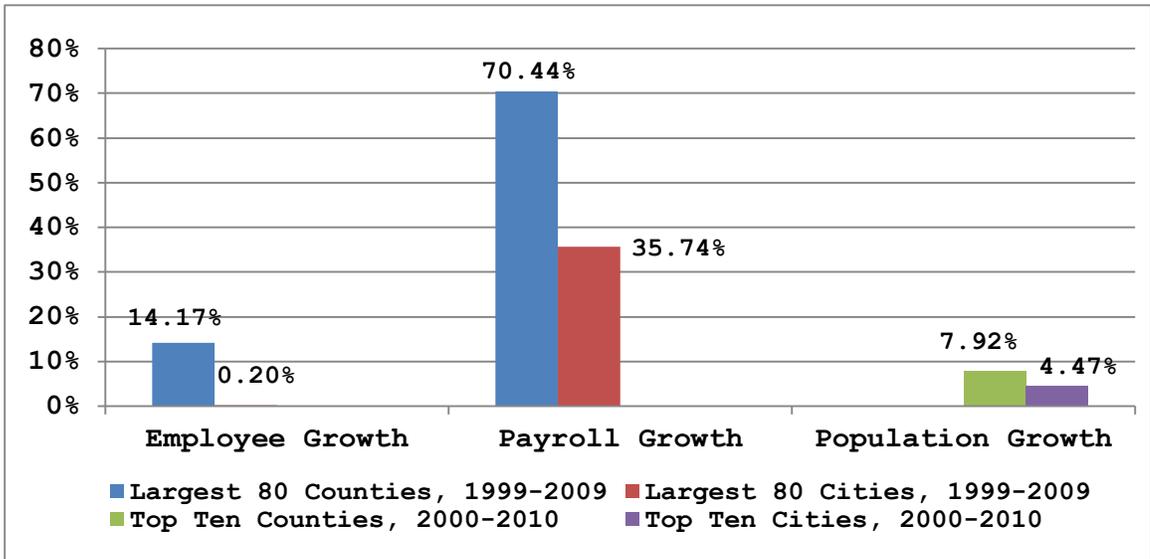


Figure 2. Employment, Payroll and Population Growth in Largest U.S. Cities and Counties.

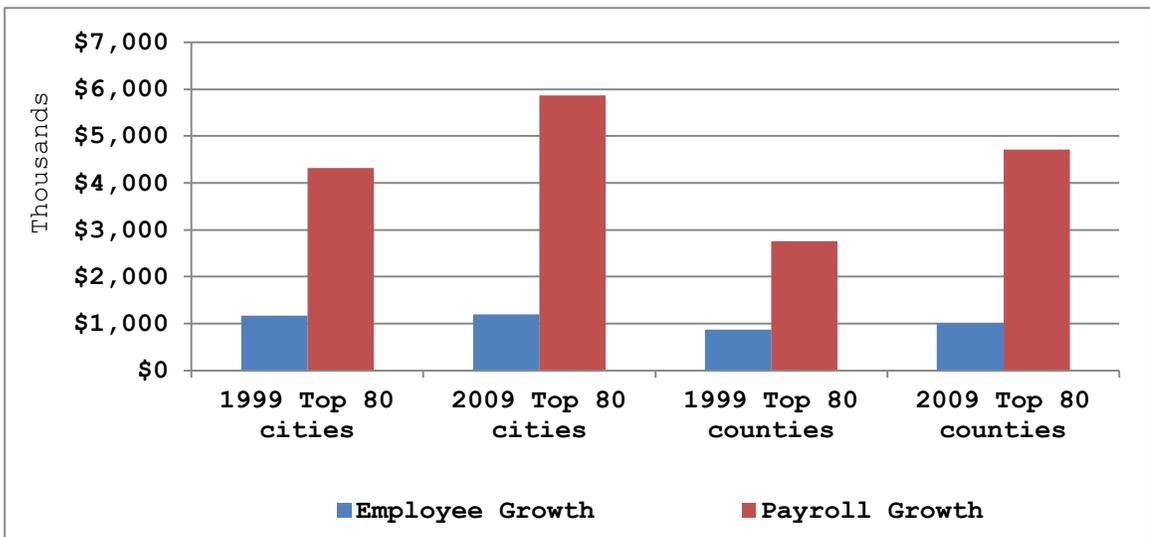


Figure 3. Employment and Payroll Data for the Largest U.S. Cities and Counties

Large suburban county governments have, in a number of regions—including the Washington metropolitan area—supplanted cities both as population centers and as centers of employment and economic opportunity. Indeed, the data

presented in figures 2 and 3 substantiates that the rate of growth in population, employment, and public personnel expenditures by large county governments within the last decade or so has surpassed that of large cities.

The next question in terms of methodology is to determine if Montgomery and Fairfax Counties are sufficiently similar to one another in a number of relevant characteristics, so that it is possible to determine the effect of the dependent variable, statutory collective bargaining, on certain independent variables. There are a number of analogous factors supporting the selection of the two jurisdictions. Both counties are the largest jurisdictions within their respective states and provide a broad range of public services, including traditional urban services. Both are part of the Washington metropolitan region, and are similar in population size, growth, and demography.

Population Demographics and Characteristics

As of the 2010 Census, Montgomery County's population stood at 971,777, a gain of 11.3 percent from 2000. During the same ten-year period, Fairfax County gained an additional 11.5 percent to become the largest jurisdiction in Virginia, as well as the Washington metropolitan region, with a population of 1.081 million. Table 1 illustrates the

Jurisdiction	White	African-American	Asian	Hispanic	Foreign Born	Total Population
Montgomery	7.5%	17.2%	3.9%	17.0%	30.9%	971,777
Fairfax	2.7%	9.2%	7.5%	15.6%	28.8%	1,081,000

Table 1. Population Diversity in Montgomery and Fairfax Counties. Numbers may add up to more than 100 percent due to respondents claiming more than one racial or ethnic heritage.

population characteristics of the two counties in terms of ethnic diversity, and proportion of foreign born. They are mostly analogous, except that Montgomery County's African-American population as a percentage of the total is nearly twice that of Fairfax County, and the Asian population of the latter is higher by 3.6 percent. The population characteristics in the areas of per capita income, attainment of a high school diploma and percent living below poverty level are also similar. The major exception is the nonfarm employment category where Fairfax County has almost 153,000 additional employees, which can partially be attributed to its larger population base. Table 2 and figure 4 highlight the population characteristics of the two counties.

Comparison of Other Population Characteristics

Both local jurisdictions have nearly identical numbers of inhabitants employed by governments at all levels, which is not surprising given that both jurisdictions border

			Montgomery County	Fairfax County
Per Capita Income			\$47,319	\$49,001
Nonfarm Businesses			\$26,480	\$28,736
Nonfarm Employment			\$411,814	\$564,426
High School Attainment			91.0%	91.9%
Below Poverty Level	6.0%	5.1%		

Table 2. Selected Population Characteristics in Montgomery and Fairfax Counties.

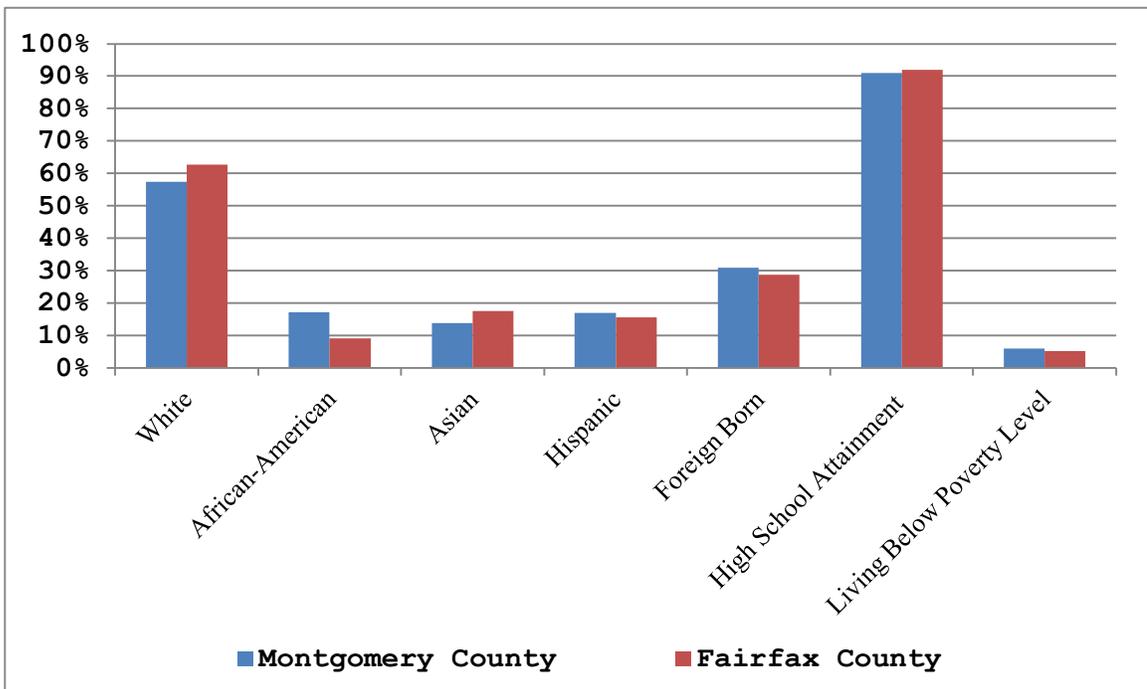


Figure 4. Comparison of Selected Demographic Characteristics of Montgomery and Fairfax Counties

Washington DC and have a large number of federal employee residents. Fairfax County leads Montgomery County in the number of people employed in professional and business services, a category which is the dominant trade sector in both jurisdictions. The number of residents employed in the goods producing category is also similar in both counties, ranging from just under 35,000 in Fairfax County and over 36,600 in Montgomery County (Montgomery County DED 2011). The Montgomery County Department of Economic Development (2011, 8) states that of the seven other local governments in the region, "Fairfax County is the most comparable to Montgomery County in terms of employment by industry. The major difference between the two jurisdictions is that Fairfax County has over 100,000 more professional and business jobs." Table 3 and figure 5 compare Montgomery County and Fairfax Counties in terms of these variables.

Government Services Expenditure Comparisons

The data above illustrate that both jurisdictions have similar population demographic characteristics. The next step is to compare their expenditure priorities. While a meticulous comparison is difficult due to the different budget terminology and typology utilized by the jurisdictions, it is apparent, nevertheless, that both governments are relatively similar in the percentage of tax

	Montgomery County	Fairfax County	Delta
All Governments	88,211	79,905	8,306
Federal Only	46,366	22,259	24,107
Services Providing	216,094	545,269	329,175
Professional and Business	102,317	216,094	113,777
Goods Producing	36,615	34,867	1,748
Total Employment	450,524	580,136	130,212

Table 3. Distribution of Employment by Sectors. Business and Professional Services employment is a subset of the Services-Providing category. (Montgomery County Department of Economic Development 2011)

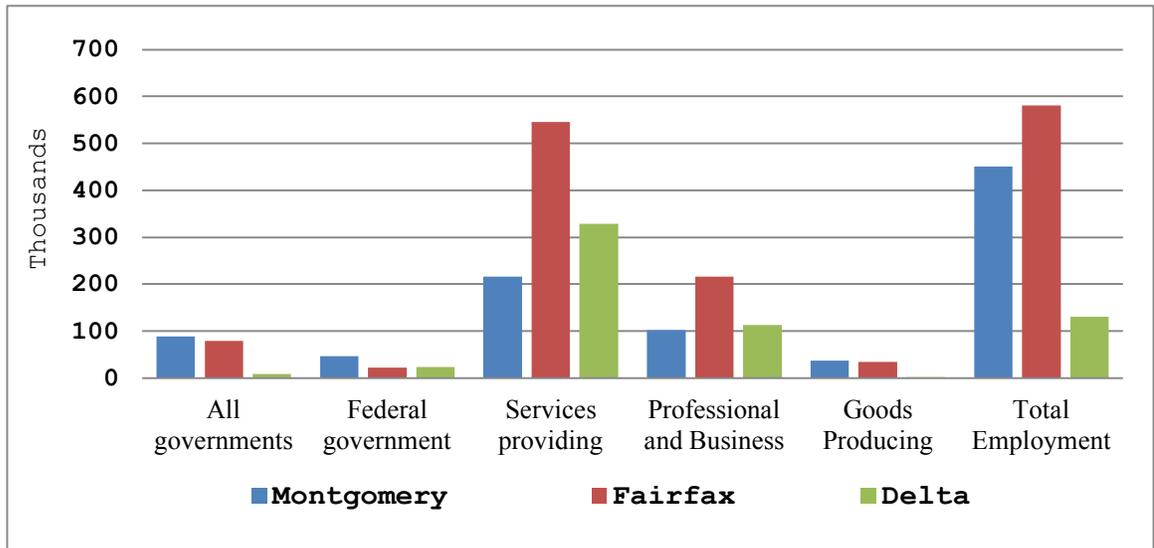


Figure 5. Comparison Chart of the Distribution of Employment by Sectors for Montgomery and Fairfax Counties

supported funds allocated to major public services. Fairfax County's FY 2012 approved general fund budget came to \$3,377.5 million with the largest portion, 52.5 percent

going towards public education; public safety and social services received 12.2 percent and 5.5 percent respectively. A pie chart summary of major Fairfax County expenditures can be found in figure 6.

Montgomery County's tax supported, or general fund, budget for FY 2012 was \$3,767,800 somewhat higher (by nearly \$390 million or 11.5 percent) than Fairfax County. Expenditures for public education consumed 52.8 percent of the budget, almost identical to Fairfax County's 52.5 percent. Spending on public safety, at 13.7 percent is slightly higher than Fairfax County's 12.2 percent.

Authorized expenditures for social services, as reflected in the budget for the Department of Health and Human Services, came to \$186.9 million, 5 percent of the general fund budget, which is very close to Fairfax County's 5.5 percent. The only appreciable difference in terms of budget resource allocation is for debt service; Montgomery County spends 7.7 percent of its general revenues on debt service compared to 3.5 percent for Fairfax County. Table 4 and figure 7 contain a listing of major budget items for Montgomery and Fairfax Counties. Figure 8 illustrates Montgomery County's FY 2012 tax supported expenditures by major service areas.

\$3,377,479,384

(subcategories in millions)

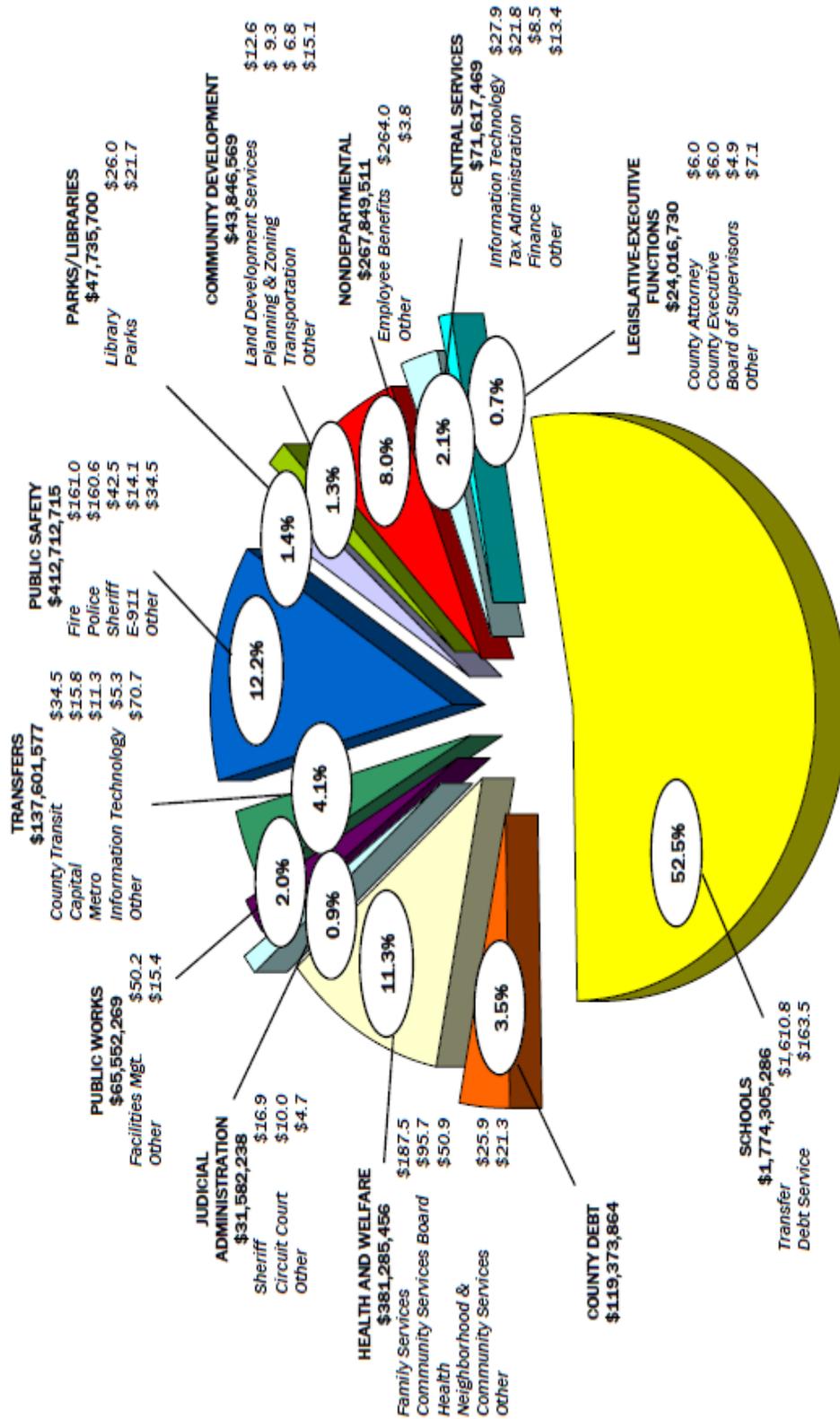


Figure 6. Fairfax County Budgeted FY 12 Expenditures

	Montgomery County	Fairfax County
Total budget	\$3,767,800,000	\$3,377,500,000
Public education	52.8%	52.5%
Public safety	13.7%	12.2
Debt service	7.7%	3.5%
Health and human services	5%	5.5%
Library	1.0%	1.4%

Table 4. Fiscal Year 2012 Comparison of General Fund Budget Expenditures

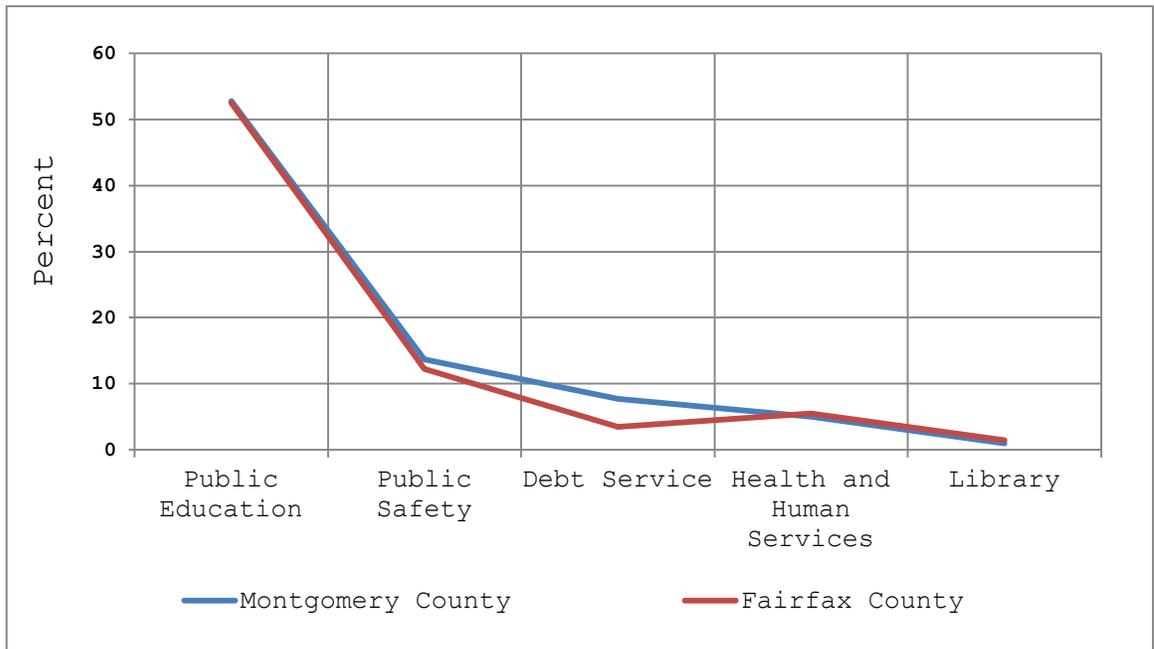


Figure 7. Fiscal Year 2012 Comparison of General Fund Budget Expenditures

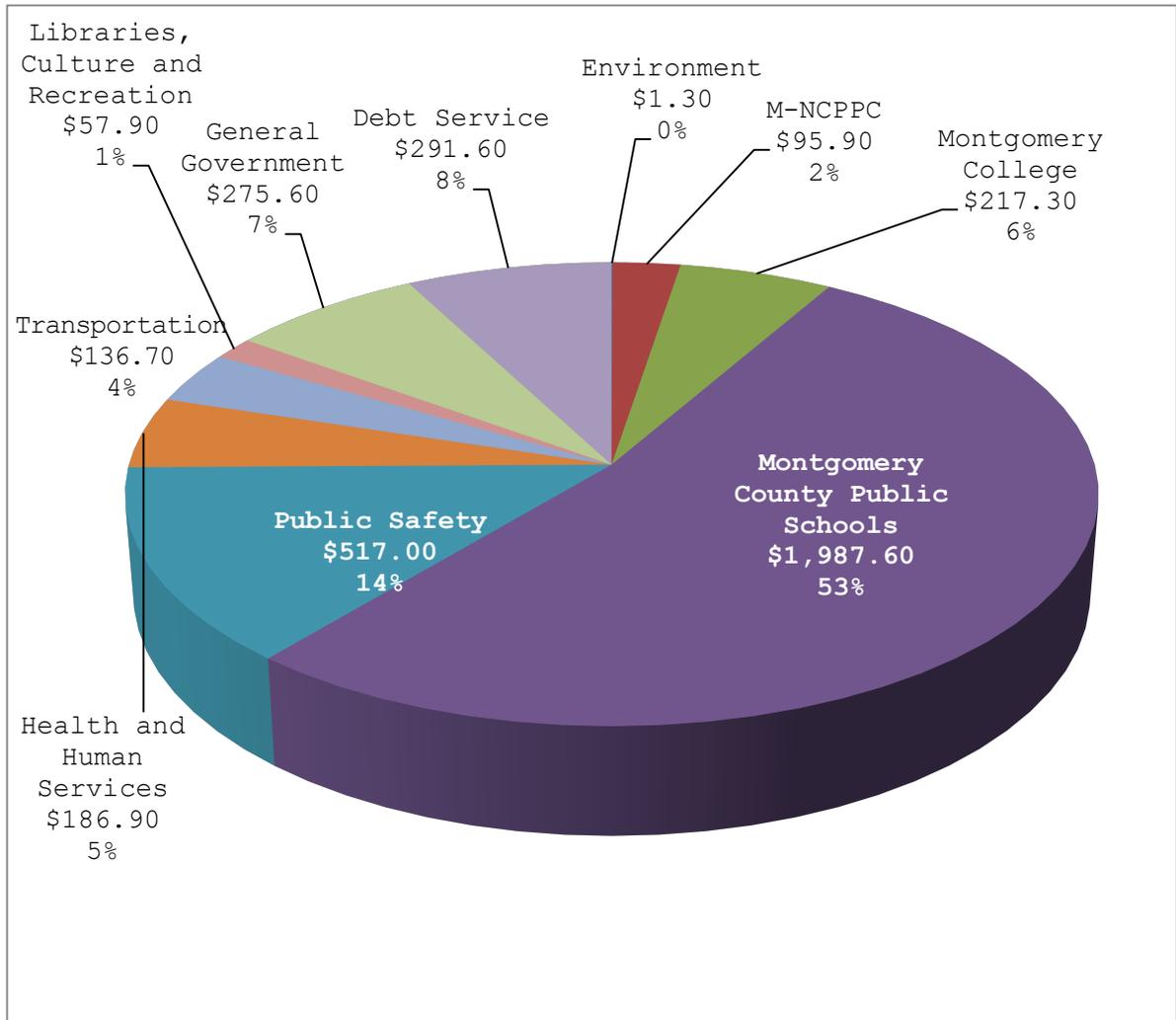


Figure 8. Fiscal Year 2012 Montgomery County General Fund Budget Expenditures in Thousands. (Source: Montgomery County Government, Office of Management and Budget 2012, 9)

Employee Distribution Comparisons

The above analysis compares population characteristics and budgeted expenditures to support the argument that the two counties are valid comparators for the case study. Given that the major focus of the dissertation is public safety employees, the third variable of the appropriateness

for utilizing Montgomery and Fairfax counties consists of comparing the number of employees, police, fire suppression, sheriff and correction functions authorized by both jurisdictions in FY 2012. Again the two counties are very similar in the number of employees authorized for each of the public safety departments. Fairfax County lists 3,653 public safety employees which is only 124 fewer in number than Montgomery County's 3,777. The number of police officers is almost identical, with Fairfax County's authorized 1,712 positions, contrasted with Montgomery County's 1,735. Fire suppression in Fairfax County authorized 1,494 positions while Montgomery County authorized 1,243. The Sheriff's office in Fairfax had 599 authorized positions and in Montgomery the same function was authorized at 165 positions. The large gap in authorized positions between the two jurisdictions can be explained by the fact that the Fairfax County Sheriff's office is also responsible for the county correctional service, while Montgomery County operates a separate Department of Correction and Rehabilitation (DOCR) under the Office of the county executive. In FY 2013, DOCR was authorized at 558 positions. When the personnel complement for both the Sheriff and DOCR is combined, the number jumps

to 723 for a difference of 124 positions.¹⁴ Table 5 and figure 9 highlight the distribution of these public safety functions.

	Montgomery County	Fairfax County	Delta
All Public Safety¹⁵	3,777	3,653	124
Police	1,735	1,712	23
Fire	1,243	1,497	254
Sheriff/ Corrections	165 (S) 558 (C)	599	124
Total authorized employees	9,402	12,070	2,668

Table 5. Comparison of Authorized Public Safety Positions, FY 2012.

Collective Bargaining vs. Meet-and-Confer and/or Political Action/Lobbying

Where the jurisdictions diverge is in the area of labor and employee relations. Article XI-A of the Constitution of Maryland allows counties to establish a Charter Home Rule form of government providing for a

¹⁴ Montgomery County's DOCR also administers Pretrial and Prerelease Services programs, thus the total number of sworn correctional officers is about 440 of the 558 listed.

¹⁵Public Safety is limited to Police, Fire and Rescue, Emergency Management, and Sheriff. Montgomery County numbers also include the Department of Correction, a function provided by the Sheriff in Fairfax.

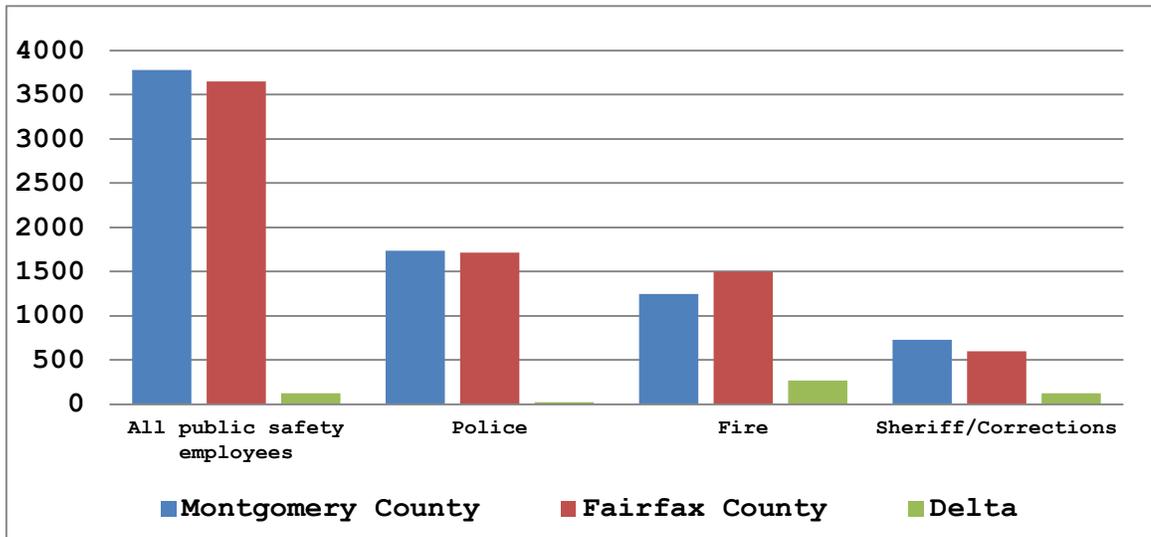


Figure 9. Comparison of Authorized Public Safety Positions, FY 2012

separately elected county executive and county council. Charter counties have broad authority within their boundaries to enact rules and regulations affecting their residents and employees. Montgomery County adopted the charter form of government in 1968 and subsequently enacted three amendments to the county charter requiring collective bargaining for employees. Section 510 requires collective bargaining with binding arbitration for police officers, while section 510A requires collective bargaining with binding arbitration for career and volunteer firefighters.¹⁶ Section 511 of the charter allows the Council to establish collective bargaining with other county employees not covered by the previous sections, including deputy sheriffs

¹⁶Montgomery County is most likely the only jurisdiction in the United States authorizing collective bargaining with volunteer firefighters.

and correctional officers, for whom the County Council enacted binding arbitration as well (Montgomery County Government 2010, 19-20). All three statutes give unions broad power and authority to represent their members, and the binding arbitration provision allows a third neutral party to select the last best offer of either the county or the union in case of a bargaining impasse. (Chapter 4 analyzes each law in depth).

In contrast to Montgomery County, Fairfax County does not have a formal collective bargaining structure. Section 15.2-300 of the Virginia Code calls for different county government structures depending upon population and the adoption of a referendum. As discussed above, Fairfax County is the largest jurisdiction in the state, and it is under the urban county executive form of government where the incumbent is responsible for the administration of the government but the Board of Supervisors still retains final authority (Fairfax County Government 2014a, under "About Us"). In terms of American intergovernmental relations, Virginia appears to fit into the Coordinate-Authority model of governance described by Deil S. Wright (2007, 72-73). Local governments in this model exercise powers at the will of the state legislature. In this case, the legislature enacted Section 40-1-57.2 of the Virginia Code prohibiting

local governments in the commonwealth from recognizing any labor union or association or entering into a collective bargaining agreement or contract with unions on matters of employment. As a result, public employees in Fairfax County are still able to join unions or associations to advocate on their behalf, but these groups lack the legal backing and power enjoyed by Montgomery County unions. Public safety employee groups in Fairfax must utilize lobbying and political action, methods which were common in the public sector before collective bargaining was accepted.

Summary of Argument

The data presented above indicate that Montgomery and Fairfax Counties are appropriate sites for conducting a case study attempting to answer the research question: *What is the impact of statutory collective bargaining on local government?* Both counties are the largest governments in their respective states, with a population either near or just exceeding one million residents, with urban and suburban communities. Other similarities include demographic distribution and resident population characteristics. Also, budgeted expenditures to services such as education, public safety, health and human services, recreation and libraries vary by less than four percent. County employment in public safety positions,

which are the focus of this dissertation, is almost identical. Since one jurisdiction has a robust collective bargaining statutory framework, and the other jurisdiction is legally proscribed from recognizing and bargaining with unions, the two jurisdictions are well suited to determine if the dependent variable of legally mandated collective bargaining has an effect on the dependent variables of employee pay, benefits, due process and management flexibility.

Data collection and analysis procedures

Yin (2009, 101-103) suggests six possible sources of evidence for case study research: documentation, archival records, interviews, direct observations, participant-observations and physical artifacts. These sources are not mutually exclusive and each has advantages and drawbacks, but the most important use of documents is to corroborate and augment evidence from other sources. This dissertation will primarily utilize documentation, archival records and interviews as defined in the following manner:

1. *Documentation.* Anything written about the topic or subject—letters, memos, agendas, minutes from meetings, newspaper articles, administrative documents, etc.

2. *Archival Records*—print or electronic. Organizational records such as budgets and reporting relationships, public use files.

3. *Interviews*. Interviews are the lynchpin to the ability to collect sufficient information in order to distinguish relevant facts concerning the research question. They need to be targeted directly on the case study topics.

Data validation procedures

As mentioned earlier, the methods of inquiry and prospective sources of data have shortcomings. Yin (2009, 114-124) identifies three principles of data collection which, if followed, minimize errors and enhance the reliability and construct validity of the evidence:

1. *Use Multiple Sources of Evidence*. Using as many sources as possible allows the researcher to address a broader range of issues. More importantly, it allows for the triangulation of data, that is having multiple data sources focusing on the same phenomenon allowing for a more robust assessment and conclusion (Yin 2009, 116).

2. *Create a Case Study Database*. Case study methodology has not developed accepted protocols separating the data from the narrative report, thereby depriving the reader from reviewing the data and

making an independent evaluation of the findings. Case study notes, documents, and quantitative data should be kept in a separate database (Yin 2009, 121).

3. *Maintain a Chain of Evidence.* As in forensic investigations, an external reader should be able to follow the evidence to its logical conclusion. The report should be based on the evidence presented, and no evidence should be lost. Data collection techniques and procedures should be cited and followed, and a reader should also be able to trace the evidentiary process backward (Yin 2009, 123).

Sources of Evidence

Summary of the importance of triangulation

Research utilizing case study methodology must ensure that it meets the burden for construct validity—the study actually measures the construct under investigation. One method to increase construct validity is to utilize triangulation or multiple sources of evidence. It allows the researcher to develop converging lines of inquiry, allowing for multiple measures of the events under study and making the findings and conclusions more convincing (Yin 2009 114; 117). This dissertation endeavors to meet the burden of data triangulation by utilizing interviews

(one-on-one with 18 key stakeholders or officials), documents (over 21) relating to employee benefits or management rights and archival materials (more than 35 concerned with unions and employee issues). A detailed list of each line of inquiry can be found below.

The following records are utilized in the dissertation:

Archival Records.

1. Montgomery County Operating Budget, FY 2012
2. Charter of Montgomery County, Nov. 2, 2010
3. Montgomery County Personnel Regulations
Montgomery County Office of Legislative Oversight: Collective Bargaining Laws in Montgomery County: A Legislative Report
4. Montgomery County Police Officer Salary Schedules, FY 2002-FY 2014
5. Montgomery County Firefighter Salary Schedules, FY 2002-FY 2014
6. Montgomery County Deputy Sheriff Salary Schedules, FY 2002-FY 2014
7. Montgomery County Correctional Officer Salary Schedules, FY 2002 through FY 2014
8. Montgomery County Employee Retirement Plans, Summary Description for Sworn Fire Personnel

9. Montgomery County Employee Retirement Plans, Summary Description for Sworn Police Personnel
10. Montgomery County Retirement Plans, Summary Description for Sheriffs and Public Safety Correctional Staff
11. Montgomery County Retirement Plans, Comprehensive Annual Financial Report, 2014
12. Montgomery County Employee Health Benefit Plans, Calendar 2013
13. Montgomery County Collective Bargaining Agreements with the Fraternal Order of Police, Local 1664 IAFF, and Local 1994 MCGEO, 2012
14. Maryland State Board of Elections, Schedule 2 Expenditures Report by the Political Action Committees of FOP Lodge 35, IAFF Local 1664 and MCGEO Local 1994 for the years 2005-2013 (separate reports for each union)
15. Fairfax County Operating Budget, FY 2012
16. Fairfax County Budget Archives, Fiscal Years 2004-2014
17. Fairfax County Personnel Regulations
18. Fairfax County Police Officer Salary Schedules, FY 2002-FY 2012

19. Fairfax County Firefighter Salary Schedule, FY 2002-FY 2014
20. Fairfax County Deputy Sheriff Salary Schedule, FY 2002-FY 2014
21. Fairfax County Retirement Systems, Active Uniformed Handbook, 2013
22. Fairfax County Retirement Systems, Active Police Officers Retirement Handbook 2013
23. Fairfax County Retirement Systems, Comprehensive Annual Financial Reports, 2002, 2007-2010, 2012-2014
24. The Virginia Public Access Project, Candidates Itemized Cash Contributions, Fairfax County Board of Supervisors, 2001-2013
25. The Virginia Public Access Project, Money Out, All Candidates and Committees-Fairfax VA., 2001-2013
26. United States Census Bureau, 2010 Census Report
27. United States Census Bureau, Census Quick Facts
28. United States Census Bureau, Table 467. City Government Employment and Payroll-Largest Cities: 1999-2009
29. United States Census Bureau, Table 468. County Government Employment and Payroll-Largest Counties: 1999-2009

30. United States Department of Labor, Office of Labor Management Standards LM 2 Reports filed by IAFF, SEIU, AFSCME, 2005-2013 (separate reports for each union and each year)
31. United States Department of Labor, Bureau of Labor Statistics, USDL Report 96-41, *Union Members in 1995*
32. United States Department of Labor, Bureau of Labor Statistics, USDL Report 01-21, *Union Members in 2000*
33. United States Department of Labor, Bureau of Labor Statistics, USDL Report 06-99, *Union Members in 2005*
34. United States Department of Labor, Bureau of Labor Statistics, USDL Report 11-0063, *Union Members in 2010*
35. United States Department of Labor, Bureau of Labor Statistics, USDL Report 15-0072, *Union Members in 2014*

Documentation.

1. National Institute on Money in State Politics, *Follow the Money*, Virginia, 2000-2011
2. National Institute on Money in State Politics, *Follow the Money*, Maryland, 2000-2012

3. Montgomery County Council, Bill 10-00, *Collective Bargaining-Police Sergeants*, May 14, 2000
4. Montgomery County Office of Public Information News Releases, *County Executive Receives Recommendations for Reform to County Service-Connected Disability Retirements*, August 11, 2008
5. Montgomery County Office of Inspector General Memorandum to Phil Andrews, County Council President on *Disability Retirement Program Review Update*, January 29, 2009
6. Montgomery County Organizational Reform Commission, Final Report, January 3, 2011
7. Memorandum to Montgomery County Council from Stephen Farber (Council Staff Director) and Karen Orlansky (Director, Office of Legislative Oversight), *Group Insurance and Retirement Benefits for All Agencies*, May 16, 2011
8. Memorandum to Montgomery County Council from Robert H. Drummer (Senior Legislative Attorney) on Bill 18-11, "Police Labor Relations-Duty to Bargain", July 15, 2011
9. Montgomery County Council Press Releases and Statements, "Montgomery County Unanimously

Approves Bill Addressing Police Bargaining," July 19, 2011

10. Memorandum to the Management and Fiscal Policy Committee of the Montgomery County Council from Stephen Farber (Council Staff Director), "Update of Pay Changes since FY 03: Montgomery County and Bi-County Agencies," April 24, 2012
11. FOP Montgomery County Lodge 35, Negotiations News, "2010 Tentative Agreement-Summary for Ratification", February 21, 2012
12. FOP Montgomery County Lodge 35, Negotiations News, May 20, 2011
13. FOP Montgomery County Lodge 35, Negotiations News, "9-0", July 21, 2011
14. Michael Laris, "Montgomery County Council rolls back police union bargaining rights," Washington Post, July 19, 2011
15. Bill Turque and Dan Morse, "Court says Montgomery County violated law in campaign to roll back police union rights," Washington Post, March 23, 2014
16. Joe Vardon and Jim Siegel, "Is SB5 Good for Ohio?" The Columbus Dispatch, October 16, 2011

17. Electronic Memorandum from Susan Woodruff, (Director of Human Resources, Fairfax County), verifying Fairfax County public safety salary increases, January 23, 2014
18. Electronic Memorandum from Susan Woodruff (Director of Human Resources, Fairfax County), concerning public safety organizational membership data, December 18, 2012
19. Memorandum from Edward Long (Fairfax County Executive to Board of Supervisors) on STRIVE Proposal Impact, March 18, 2013
20. Fairfax County Board of Supervisors ACTION ITEM "Approval of New Pay Structure for General County Employees," October 28, 2014
21. Fairfax County Board of Supervisors web emails to county residents on employee pension issues

Interviews.

All interviews were conducted by the author.

1. Susan Woodruff (Director of Human Resources, Fairfax County) June 29, 2012, and October 17, 2012
2. David M. Roher (Former Police Chief, Fairfax County) December 7, 2012

3. Ronald Mastin (Fire Chief, Fairfax County, retired February 2014), December 7, 2012
4. Arthur Wallenstein (Director, Montgomery County Department of Correction and Rehabilitation) February 13, 2013
5. Richie Bowers (Fire Chief, Montgomery County) February 19, 2013
6. Tom Manger (Police Chief, Montgomery County; former Police Chief, Fairfax County, February 19, 2013
7. Stan Barry (Fairfax County Sheriff), March 18, 2013
8. Anthony Griffin (former County Executive, Fairfax County), April 3, 2013
9. Sharon Bulova (Chair, Fairfax County Board of Supervisors), May 29, 2013
10. Jeffrey McKay (Fairfax County Board of Supervisors), June 19, 2013
11. Penelope Gross (Fairfax County Board of Supervisors; Chair, Personnel Committee), July 1, 2013
12. Cathy Hudgins (Fairfax County Board of Supervisors), November 1, 2013

13. John Cook (Fairfax County Board of Supervisors),
November 14, 2013
14. Ritchie Bowers (Fire Chief for Fairfax County),
March 25, 2014
15. John Niemec (President, Fairfax County IAFF Local
2068), April 15, 2014
16. Jeffrey Buddle (President Montgomery IAFF Local
1664), April 29, 2014
17. Michael Subin (Former Montgomery County
Councilmember), October 3, 2014
18. Stephen Farber (Staff Director, Montgomery County
Council) and Michael Faden (Senior Legislative
Attorney), October 13, 2014

CHAPTER 4

RESULTS AND FINDINGS

A Comparative Analysis of Salaries and Benefits of Public Safety Employees in Montgomery and Fairfax Counties

This chapter compares the salaries and benefits of uniform public safety employees in Montgomery County, Maryland, and Fairfax County, Virginia. The designation, "uniformed public safety employee," includes police officers, firefighters and paramedics (or EMS), deputy sheriffs and correctional officers. This is a generally accepted categorization in local government human resource administration and will be used throughout the dissertation. Base salary increases achieved by uniformed public safety employees over the ten-year period 2004-2014 in Montgomery and Fairfax Counties are analyzed to determine the effect of collective bargaining, followed by comparisons of public safety salaries at certain career longevity points. Furthermore, health insurance premiums and benefits, retirement programs, paid holidays, and sick and annual leave policies for public safety employees in both jurisdictions are examined and evaluated to determine the union effect.

Legal Framework for Determining Public Safety Employee Concerns in Montgomery and Fairfax Counties

Public safety employees in Montgomery County utilize collective bargaining to obtain improvements in wages and "fringe" benefits. Section 33-80 of the Montgomery County Police Bargaining Law requires the County to bargain in good faith over salaries, wages, health insurance benefits, pensions and working conditions. Comparable statutory provisions exist for firefighters and other County employees, including deputy sheriffs and correctional officers. All three Montgomery County bargaining laws follow a similar process for bargaining impasses: if the unions and County management cannot come to an agreement by a certain prescribed date (ranging from mid-January to early February), impasse is declared resulting in mediation, followed by arbitration to be conducted by a mutually selected outside, neutral, third party. In Montgomery County, modifications to economic items, either from a voluntary agreement of the parties at the table or by an arbitrator's award, must be submitted to the County Council for final approval.

Montgomery County has four recognized bargaining units: police, firefighters and EMS, office, professional and technical ("white collar" unit), and service labor and

trades ("blue collar" unit). Approximately 1,600 police officers, up to and including the rank of sergeant, are represented by Lodge 35 of the Fraternal Order of Police (FOP). Lodge 35 was originally certified in 1977 as the representative for police under the meet-and-confer law then in place in the county. Approximately 1,100 sworn firefighter and EMS employees through the rank of captain are represented by the Montgomery County Career Firefighters, Local 1664 of the International Association of Firefighters (IAFF), AFL-CIO. Correctional officers (approximately 450 in number) and deputy sheriffs (approximately 150) are in the office, professional and technical (OPT) bargaining unit, along with several thousand other county employees, and are represented by the Municipal and County Employees Organization (MCGEO), Local 1994 of the United Food and Commercial Workers Union (UFCWU), AFL-CIO. MCGEO also is the certified bargaining representative for the service labor and trades unit, and represents nearly six thousand employees in Montgomery County.

In contrast to Montgomery County, Fairfax County public safety employees do not have the right to collective bargaining. Modifications of wages, benefits, and pension changes are recommended by the county executive and

disposed of by the Board of Supervisors as the ultimate legislative body. This is not to imply that Fairfax County employees do not have input into the decision making process. The county grants employee groups with at least 40 members the right to voluntary dues deduction, and confers certain rights to them to represent members, including meeting with county department directors and the board of supervisors.¹⁷ Further, Fairfax County Personnel Regulations (Section 15.2) require county departments to consult with employees through their representatives prior to implementing rules and regulations which affect them. In terms of wages and benefits, Fairfax County also utilizes a compensation philosophy of wanting to be at least in the top 50th percentile, as guided by the following board of supervisors' adopted document:

1. Commit to a total compensation perspective as a means of attracting and retaining high performing employees who deliver exceptional services and programs to the public;
2. Establish total compensation policies and procedures that are equitable to employees and effectively support the County's strategic and operational objectives;
3. Maintain competitiveness, on a total compensation basis, with the market which is identified as jurisdictions and organizations determined by the

¹⁷Susan Woodruff (Director, Fairfax County Department of Human Resources), interviewed by the author, June 29, 2012.

County to be competing for the same employee talent. (Susan Woodruff, personal communication with the author, December 20, 2012)¹⁸

To discern if legally mandated collective bargaining achieves excess economic gains for public safety employees in Montgomery County, a ten year (2004-2014) comparison was conducted consisting of the following variables: overall cost of living increases, changes in entry level salaries, progression on the salary scale, health insurance benefits, paid days off-holidays, plus sick and annual leave. The analysis also consists of a comparison of retirement benefits, including the portion of employee salary deducted for pensions and a dollar-for-dollar comparison of the retirement allowance paid to similarly situated public safety employees. Data on Montgomery County salaries were obtained from the county's collective bargaining agreements and website, listing the salary schedules for each of the public safety classifications for fiscal years 2004 through 2014. Fairfax County salary information was obtained from the county's annual approved budget documents for FY 2004 through FY 2014.

¹⁸Defined comparators include: Arlington County; City of Alexandria; District of Columbia; Loudon County; Montgomery County; Prince George's County; and Prince William County. Other employers such as authorities, commissions and private sector may also be included when appropriate to address recruitment or retention concerns.

**History of Public Safety Employee Salary Increases:
Montgomery County, Maryland, and Fairfax County, Virginia,
2004-2014**

Police Officers

Salary increases granted to public safety employees in both jurisdictions are compared and analyzed, beginning with the macro, or overall, pay raises granted, followed by more detailed data on each of the public safety services. Table 6 and Figure 10 compare the cost of living allowance or general wage adjustment granted to police from FY 2004 to FY 2014 in both jurisdictions. The aggregate across the board salary increase in Montgomery County for FY 2004 through FY 2014 came to 24.35 percent for an average increase of 2.43 percent per year (without compounding). As part of Montgomery County's response to a projected budget deficit in FY 2010, a negotiated 4.25 percent general wage increase between the county and Lodge 35 of the FOP was not included in the approved budget, therefore it is not part of the ten-year calculation. In fiscal year 2013, police officers along with all other county employees received a one-time cash bonus of \$2,000. Since the bonus was not added to the base, it too is excluded from the ten-year percentage calculation. During the same time period, police officers in Fairfax County received a 26.46 percent general wage adjustment for an average increase of 2.46 percent per

year (without compounding). A comparison of the general wage increase, or market salary adjustment, for police officers in the two jurisdictions for 2004-2014 show that Fairfax County police received 2.11 percent more than Montgomery County police for the FY 2004-2014 period. While the macro salary data indicates a marginal advantage for Fairfax County police officers, it must be kept in mind that had the FY 2010 FOP negotiated salary increase of 4.25 percent been approved the aggregate number for Montgomery County would have been 28.60 percent, or a mean increase of 2.86 percent for the period under study, tilting the balance in favor of Montgomery County by 0.22 percent per year. An additional factor to consider is the \$2,000 non-base bonus paid to Montgomery County police in FY 2013 which is not in the calculation. Table 6 and figure 10 below display the yearly general fund increases paid to police officers in both jurisdictions.

Firefighters and Emergency Rescuers

As illustrated in Table 7 and Figure 11, union firefighters and EMS employed by Montgomery County received a total of 27.75 percent base salary increase (without compounding) for the period FY 2004-2014, or an average of 2.77 per year. Fairfax County granted 32.73 percent salary

Fiscal Year	Montgomery County	Fairfax County	Delta Montgomery - Fairfax (MC-FC)
2004	2.0%	2.10%	-0.10%
2005	2.0%	2.98%	-0.98%
2006	2.75	7.07%	+4.32%
2007	4.0%	4.25%	-0.25%
2008	7.5%	2.92%	+4.58%
2009	4.0%	2.96%	+1.04%
2010 ¹⁹	0.0%	0.0%	0.0%
2011	0.0%	0.0%	0.0%
2012	0.0%	2.0%	-2.0%
2013 ²⁰	\$2,000	2.18%	Not applicable
2014	2.1%	0.0%	+2.1%

Table 6. Comparison of Across the Board Police Base Salary Increases

increases (without compounding) for the same time period for firefighters, or an average of 3.27 percent per year. As with the police comparison above, the data indicates a five percent (4.98) advantage for the non-collective bargaining jurisdiction of Fairfax County over ten years. Inclusion of the \$2,000 non-base bonus, however,

¹⁹In 2010, the FOP collective bargaining agreement called for an across the board increase of 4.25 percent.

²⁰In 2013, Montgomery County granted a \$2,000 non-base bonus salary payment to all employees.

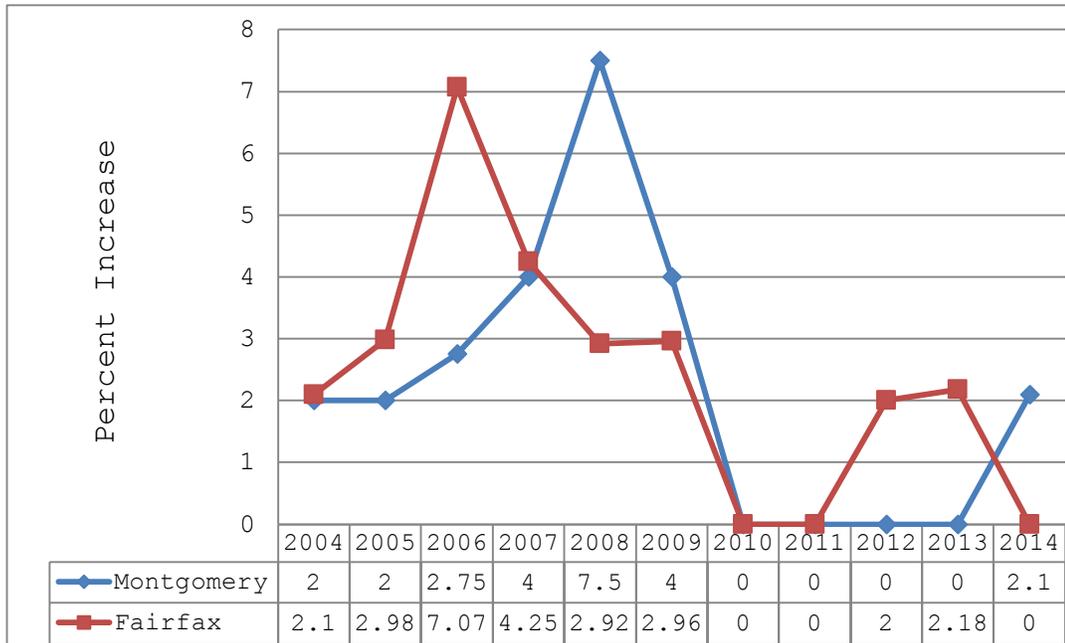


Figure 10. Comparison Chart of Across the Board Police Salary Increases

would reduce Fairfax County’s advantage. There is also a more substantial factor which needs to be considered; IAFF Local 1664 negotiated a three-year agreement with Montgomery County for fiscal years 2009-2011. It called for across-the-board salary increases of 4 percent in FY 2010, and 7 percent in FY 2011. Due to the county’s budget shortfalls during these years, the negotiated base wage increases for these two years were not included in the county’s approved budget. Adding these numbers into the calculation would bring the Montgomery firefighter base increases to 34.75 percent, a slightly more than two percent (2.02) advantage over Fairfax County during the

Fiscal Year	Montgomery County	Fairfax County	Delta Montgomery - Fairfax (MC-FC)
2004	3.5%	2.10%	+1.5%
2005	3.5%	7.25%	-3.75%
2006	4.0%	7.07%	-3.07%
2007	5.0%	6.25%	-1.25%
2008	5.0%	2.92%	+2.08%
2009	4.0%	2.96%	+1.10%
2010 ²¹	0.0%	0.0%	0.0%
2011 ²²	0.0%	0.0%	0.0%
2012	0.0%	2.0%	-2.0%
2013 ²³	\$2,000	2.18%	Not Applicable
2014	2.75%	0.0%	+2.75%

Table 7. Comparison of Across the Board Firefighter/EMS Base Salary Increases FY 2004-2014

ten-year period 2004-2014 and a mean of 0.20 percent Montgomery County. Table 7 and figure 11 highlight the actual paid salary increases for firefighters in Montgomery and Fairfax Counties.

²¹ In FY 2010, the IAFF collective bargaining agreement called for an across the board increase of four percent.

²² In FY 2011, the IAFF collective bargaining agreement called for an across the board increase of seven percent.

²³ In FY 2013, Montgomery County granted a \$2,000 non-base bonus salary payment to all employees.

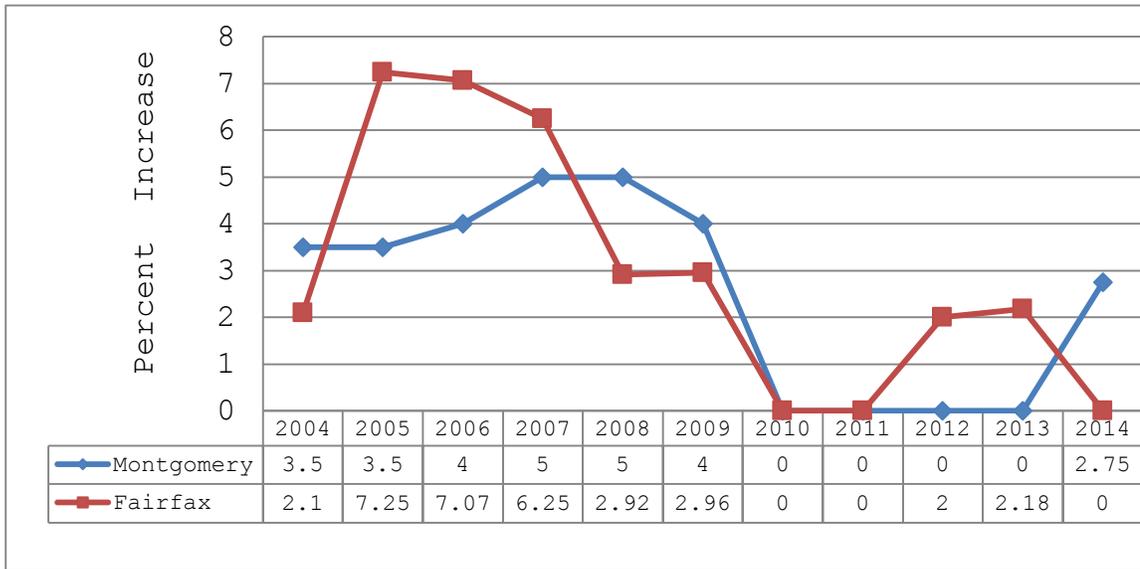


Figure 11. Comparison Chart of Across the Board Firefighter/EMS Base Salary Increases

*Deputy Sheriffs and Correctional Officers*²⁴

Table 8 and figure 12 show that Montgomery County’s unionized deputy sheriffs and correctional officers saw their base pay increase by 24.25 percent from FY 2004–2014, or an average of 2.42 percent per year (without compounding). By contrast deputy sheriffs in Fairfax County received 22.52 percent increase, or an average of 2.52 percent per year for the same time period (without compounding), showing a 1.79 percent advantage over ten years for Montgomery County’s union represented employees,

²⁴Montgomery County deputy sheriffs and correctional officers are represented by the same union, the Municipal and County Government Employees Organization, Local 1994, UFCW. The correctional function in Fairfax County is performed by the Sheriff’s Office and performed by deputy sheriffs.

Fiscal Year	Montgomery County	Fairfax County	Delta Montgomery - Fairfax (MC-FC)
2004	3.75%	2.10%	+1.75%
2005 ²⁵	2.08%	2.98%	-0.98%
2006	2.75%	3.07%	-0.32%
2007	4.00%	4.25%	-0.25%
2008	4.00%	2.92%	+1.08%
2009	4.50%	2.96%	+1.54%
2010 ²⁶	0.0%	0.0%	0.0%
2011	0.0%	0.0%	0.0%
2012	0.0%	2.0%	-2.0%
2013 ²⁷	\$2,000	2.18%	Not Applicable
2014	3.25%	0.0%	+3.25%

Table 8. Comparison of Across the Board Deputy Sheriff and Correctional Officer Base Salary Increases

or a mean of 0.18 percent annually. Additionally, as was the case with the other collective bargaining agreements in Montgomery County, the agreement between the MCGEO Local 1994 UFCW, representing correctional officers and deputy sheriffs called for a general wage adjustment of 4.5

²⁵ In FY 2005 as a result of collective bargaining, a new pay scale was created for represented deputy sheriffs resulting in additional compensation for most union members in order to fit into the pay grids.

²⁶ The MCGEO collective bargaining agreement called for an across the board pay increase of 4.25 percent.

²⁷ Montgomery County granted a \$2,000 non-base "bonus salary adjustment" to all employees.

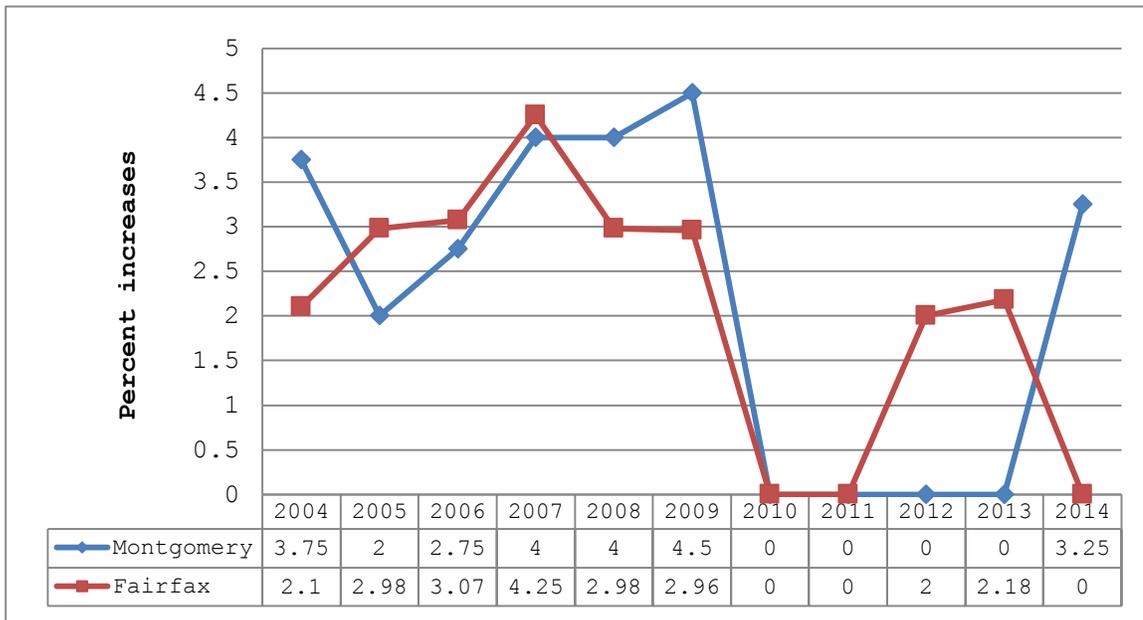


Figure 12. Comparison Chart of Across the Board Deputy Sheriff and Correctional Officer Base Salary Increases

percent in FY 2010 which was not funded due to the County's budget shortfalls. If this amount is included, it brings the total amount to 28.75 percent, for a ten-year average of 2.88 percent, boosting the union difference to over six percent (6.29) for the ten-year period. Also the calculations omit the \$2,000 onetime bonus given to union employees in Montgomery County.

Summary of public safety general base salary increases

The above data indicates that in terms of salary increases to the base the amounts varied from year to year, but from 2004 to 2014 the differences narrowed considerably amounting to a mean of 0.16 percent per year in favor of

Montgomery County deputy sheriffs and correctional officers, a mean of 0.21 percent annual difference favoring Fairfax County police officers, and a mean of 0.45 percent annual difference favoring Fairfax County firefighters. Based on this data alone, it appears that the advantage of the presence of a collective bargaining statute is negligible. Nonunion police and firefighters fared slightly better than their unionized Montgomery County colleagues, and the unionized deputy sheriffs and correctional officers were ahead in terms of overall salary increases but by less than two percent for the period 2004-2014. Would the inclusion of the negotiated-but-not-paid general cost of living increases significantly alter the findings? It would reverse the police finding to favor Montgomery County from -0.21 percent to +0.37 percent, and would reverse the firefighter ten-year averages from a -0.45 percent to +0.18 percent annually. For Montgomery County deputy sheriffs and correctional officers, the gain would increase by nearly a half a percentage per year, from +0.16 percent to +0.57 percent. Referring back to the research question: *What is the impact of collective bargaining in terms of employee economic outcomes*—in this case annual increases in wages or salaries—the data indicate that it has a marginal impact for deputy sheriffs and correctional officers and no impact

for police and firefighters. Adding the negotiated-but-not-paid salary increases to the analysis does not significantly alter the findings since the 2004-2014 difference (albeit in favor of Montgomery County), ranges from just over 2 percent for firefighters to 6.33 percent for deputy sheriffs and correctional officers. Given that this dissertation is attempting to measure the impact of statutory collective bargaining, the fact that negotiated wage increases were not funded by Montgomery County also argues against their inclusion in the comparisons. Table 9 and figure 13 highlight the differences between the two jurisdictions in terms of base salary increases. Table 10 and figure 14a make the same comparisons, but include the “what if” Montgomery County paid the negotiated salary adjustments.

	Montgomery County		Fairfax County		Delta	
	Percent Change	Mean Change	Percent Change	Mean Change	Delta (MC-FC)	2004-2014 Mean
Public Safety Service						
Police Officers	24.35%	2.21%	26.46%	2.41%	-2.11%	-0.21% annually
Firefighters and EMT	27.75%	2.52%	32.73%	2.97%	-4.98%	-0.45% annually
Deputy Sheriffs	24.25%	2.20%	22.46%	2.04%	+1.79%	+0.16% annually
Correctional Officers	24.25%	2.20%	22.46%	2.04%	+1.79%	+0.16% annually

Table 9. Summary of Public Safety Salary Increases Paid, FY 2004-2014



Figure 13. Summary of Public Safety Salary Increases Paid, FY 2004-2014

Service	Montgomery County		Fairfax County		2004-2014 Delta
	Percent Change	Annual Mean	Percent Change	Annual Mean	
Police	28.60%	2.60%	24.46%	2.23%	+4.14%
Firefighters	34.75%	3.16%	32.73%	2.97%	+2.02%
Deputy Sheriffs	28.75%	2.61%	22.46%	2.04%	+6.29%
Correctional Officers	28.75%	2.61%	22.46%	2.04%	+6.29%

Table 10. "What If" Summary of Public Safety Salary Increases Assuming Payment of all Negotiated Increases, FY 2004-2014

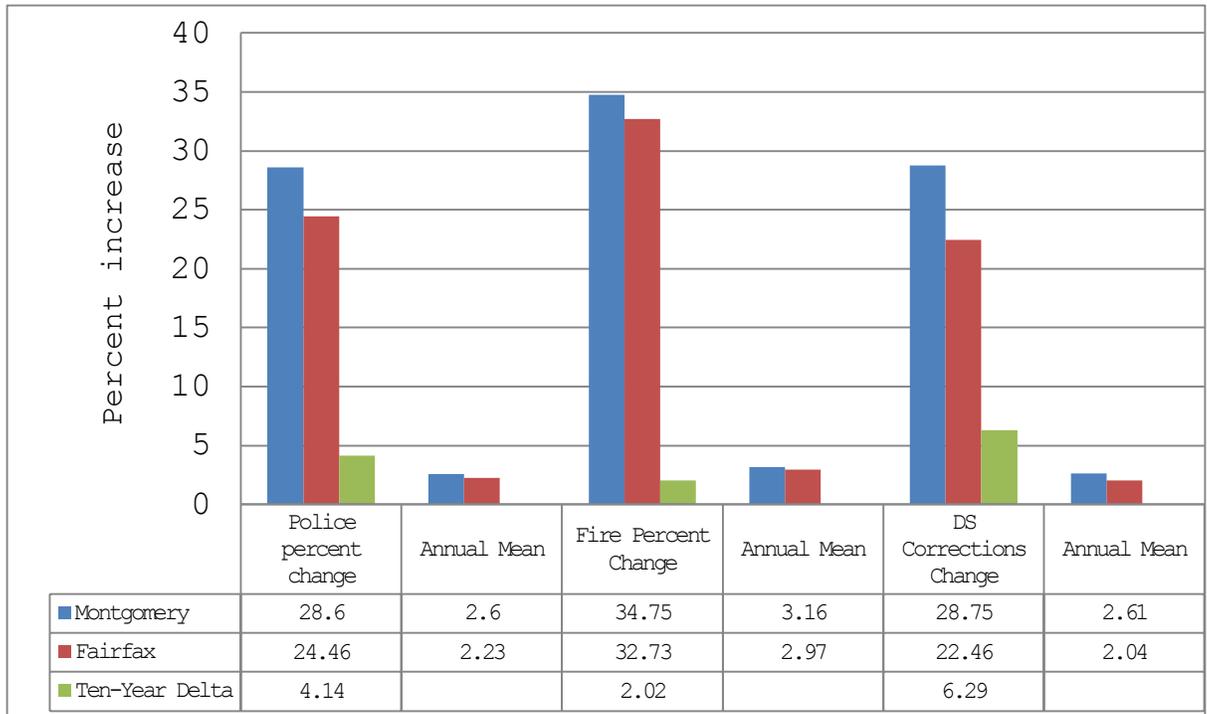


Figure 14a. "What If" Summary of Public Safety Salary Increases Assuming Payment of all Negotiated Increases, FY 2004-2014

Comparisons of Public Safety Salaries at Certain Career Points

Police Officer Entry Level Salaries

To further test the validity of the above findings, a broader comparison of salaries between these public safety occupational groupings was conducted by utilizing the following factors: actual starting salaries of public safety personnel in the two jurisdictions, salaries at certain career progression points, and the top of the pay scale or the maximum salary of each public safety group for the period of FY 2004-2014. The first evaluation involves

	Montgomery County	Fairfax County	Delta (MC-FC)
FY 2004 Salary	\$38,534	\$38,793	-\$259
FY 2014 Salary	\$47,959	\$49,083	-\$1,124
Increase by dollars and percentage	\$9,425 (24.45%)	\$9,800 (25.26%)	-\$375
Comments	Montgomery County slightly lagged behind Fairfax in both actual dollar amount as well as in the rate of increase during the period FY 2004-FY 2014	Fairfax County's starting salary was \$259 or 0.67% higher in 2004. By 2014 the gap grew to \$1,124 or 2.34%.	

Table 11a. Comparison of Police Officer Entry Level Salaries

police entry level salaries as shown in table 11A and figure 11A. In 2004 the starting salary for a Montgomery County police recruit was \$38,534 and by 2014 it stood at \$47,959 an increase of \$9,425 or 24.45 percent. Fairfax County police recruits in 2004 started at \$38,793 and by 2014 it increased by \$9,800 to \$49,083, or 25.26 percent. Table 11a and Figure 14b highlights the starting salary of police officers in the two jurisdictions.

Firefighter and EMS Entry Level Salaries.

Table 11b and figure 14c show that in FY 2004, Montgomery County's starting salary for entry level

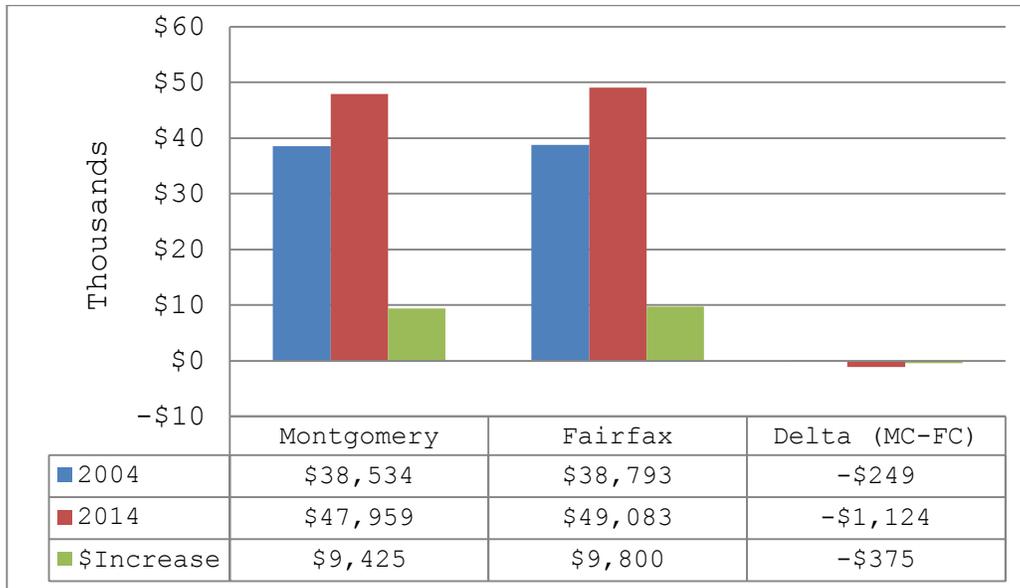


Figure 14b. Comparison Chart of Police Officer Entry Level Salaries, FY 2004-2014

firefighters stood at \$31,438 and by FY 2014 it increased by \$11,320 to \$42,320, for a 35.95 percent jump. During the same time period Fairfax County salaries went from \$37,838 to \$50,942, an increase of \$13,104 or 24.63 percent. In terms of the percentage increase, Montgomery County firefighter/EMS personnel fared slightly better—35.95 percent vs. 34.63 percent—a percentage point of 1.32. More significant is the actual starting salary at both time points which was \$6,400 higher in Fairfax in 2004, and \$8,184 higher in 2014, a difference of almost 20 percent in favor of Fairfax County. Table 11b and figure 14c compare the salaries in the two jurisdictions.

	Montgomery County	Fairfax County	Delta (MC-FC)
FY 2004 Salary	\$31,438	\$37,838	\$6,400 (35.95%)
FY 2014 Salary	\$42,758	\$50,942	\$8,184 (34.63%)
Increase by dollars and percentage	\$11,194 (35.95%)	\$13,104 (34.63%)	\$1,784 (1.32%)

Table 11b. Comparison of Firefighters and EMT Entry Level Salaries

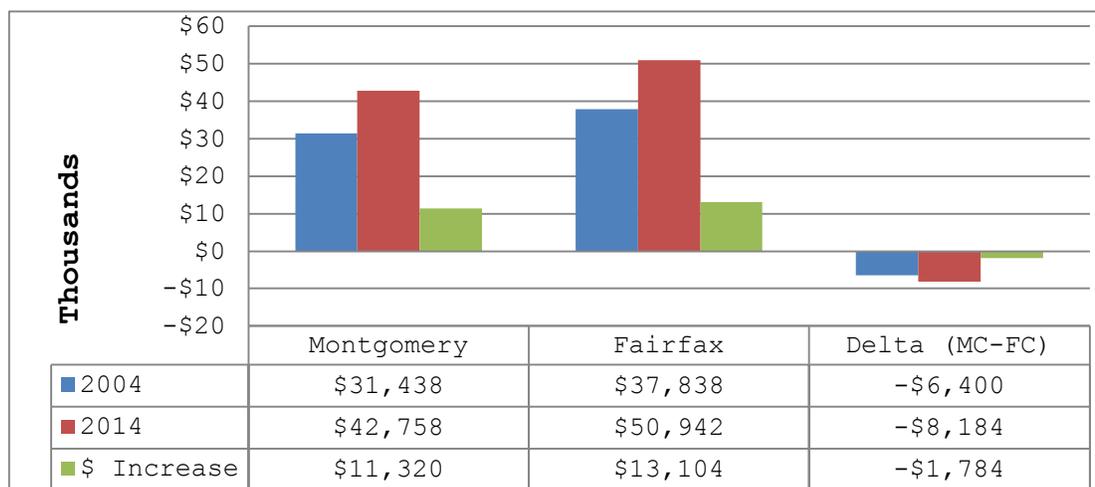


Figure 14c. Comparison Chart of Firefighter and EMT Entry Level Salaries, FY 2004-2014

Deputy Sheriff Entry Level Salaries

Table 11C and figure 14d show that the FY 2004 entry level salary for a deputy sheriff in Montgomery County stood at \$36,188, and by FY 2014 it increased by \$8,873 to \$45,061 or 24.52 percent. During the same time period Fairfax County

	Montgomery County	Fairfax County	Delta (MC-FC)
FY 2004 Salary	\$36,188	\$36,947	-\$759 -2.09%
FY 2014 Salary	\$45,061	\$44,949	+\$112 +0.25%
Increase by dollars and percentage	\$8,873 (24.52%)	\$8,002 (21.65%)	+871 +2.87%
Comments	Starting salary was \$759 lower in 2004, but by 2014 it was higher than Fairfax by \$112.00	Deputy Sheriffs in Fairfax lag behind Montgomery County by nearly three percent in 2014	

Table 11c. Comparison of Deputy Sheriff Entry Level Salaries

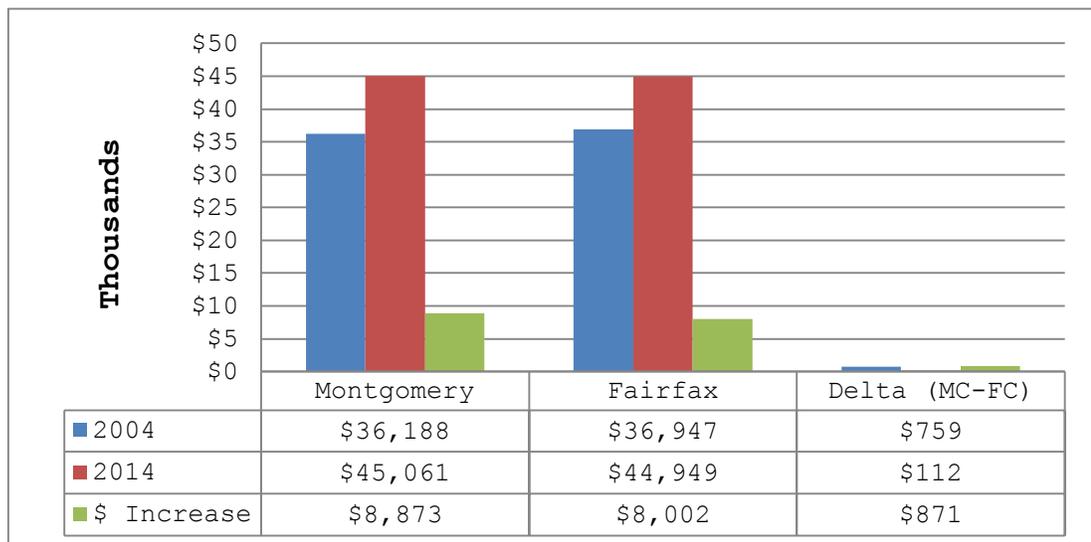


Figure 14d. Comparison Chart of Deputy Sheriff Entry Level Salaries, FY 2004-2014

salaries went from \$36,947 to \$44,949 an increase of \$8,002 or nearly 22 percent. At the beginning of the time period under study, FY 2004, Fairfax County's starting salary was \$759

less than in Montgomery County, but by 2014 the gap was reversed in favor of Montgomery County by \$112. Montgomery County's unionized deputy sheriffs also surpassed Fairfax County in terms of actual dollar increases but only by \$871 over a ten-year period.

Correctional Officer Entry Level Salaries

In Montgomery County the local detention facility, along with the ancillary community correctional programs and services, are under the purview of the Montgomery County Department of Correction and Rehabilitation (DOCR), which is part the County's executive branch. DOCR is headed by a director who is appointed by and responsible to the elected county executive of Montgomery County. In FY 2014 DOCR's personnel complement of 517.8 depleted nearly 90 percent of its budget of \$65.5 million (Montgomery County OMB 2014, under Correction and Rehabilitation). Detention services are provided by over 400 sworn correctional officers who are responsible for the direct custody, care, and safety of inmates and arrestees within the local detention facility. They must satisfy standards established by the Maryland Correctional Training Commission and are not responsible for any other public safety functions. Fairfax County's adult detention services are provided by the Fairfax County sheriff, established in 1742 when

Fairfax County was formed (Fairfax County DMB 2014). The Sheriff is elected by the voters of the county; the position does not report to and is not supervised by the Fairfax county executive. In FY 2014, the Sheriff's complement of nearly 600 full time equivalent employees consumed 84 percent of its budget of \$62.4 million. Detention services are provided by over 300 Deputy Sheriffs who are required to supervise and manage the County's inmate and arrestee population. They must also be able to provide basic law enforcement services related to court house security and the processing of warrants. Unlike Montgomery County, the employees of the Office of the Sheriff have responsibilities outside of the detention center and must be able to obtain certifications from the Virginia Department of Criminal Justice Services as a jailor and a law enforcement officer, in addition to certification in court security and civil process in order to remain in their positions. By contrast the unionized Montgomery County correctional officers do not need to qualify as law enforcement or court security personnel.

Table 11d and Figure 14e show that in 2004, the starting salary for a Montgomery County correctional officer stood at \$30,313; by 2014 it had increased by \$11,543 to \$41,857

	Montgomery County	Fairfax County	Delta (MC-FC)
FY 2004 Salary	\$30,313	\$36,947	\$6,634 -21.88%
FY 2014 Salary	\$41,856	\$44,949	\$2,193 -5.24%
Increase by dollars and percentage	\$11,543 (38.07%)	\$8,002 (21.65%)	+\$3,541 +16.46%
Comments	The increase in both percentage and actual dollar amount favors Montgomery.	Although the gap has narrowed considerably, Fairfax still edges out Montgomery in the starting salary.	

Table 11d. Comparison of Deputy Sheriff and Correctional Officer Entry Level Salaries, 2004-2014

a 38.07 percent difference. During the same time period Fairfax County salaries went from \$36,947 to \$44,949, an increase of \$8,002 or nearly 22 percent. The increase exceeded the raises given to Fairfax County deputy sheriffs by over 16 percent. In terms of the actual dollar amount, the raises bargained by Montgomery correctional officers exceeded the Fairfax county deputy sheriffs' increases by \$3,541 or 44.25 percent. Due to the law enforcement authority held by the Fairfax County deputy sheriffs, the starting salary was higher in FY 2004 by over six thousand dollars or nearly 22 percent. By FY 2014, the gap, while still favoring Fairfax County, narrowed to nearly \$2,200 or

nearly 5.25 percent. Table 11d and figure 14e compare the salaries in the two jurisdictions, while tables 11e and figures 14e-14f display the entry level salaries of all public safety services.

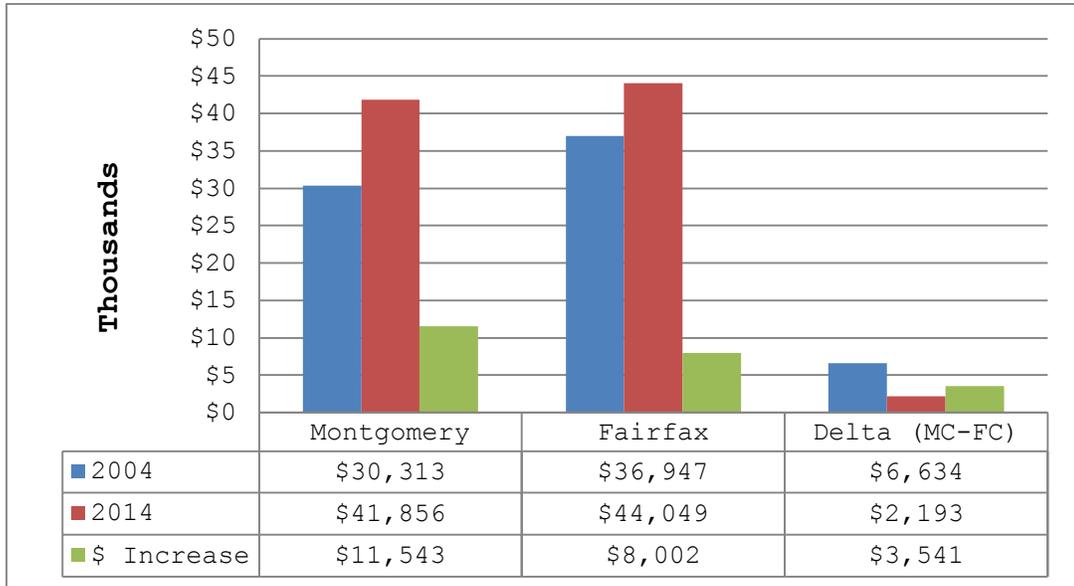


Figure 14e. Comparison of Correctional Officer Entry Level Salaries, FY 2004-2014

Service	Montgomery County		Fairfax County		2004-2014 Delta
	Percent Change	Annual Mean	Percent Change	Annual Mean	
Police	24.45%	2.44%	25.26%	2.52%	-0.81%
Firefighters	35.95%	3.60%	34.63%	3.46%	+1.32%
Deputy Sheriffs	24.52%	2.45%	21.65%	2.16%	+2.87%
Correctional Officers	38.07	2.45%	21.65%	2.16%	16.42%

Table 11e. Comparison of FY 2004-2014 Percent Increase of All Public Safety Services Entry Level Salaries 2004-2014

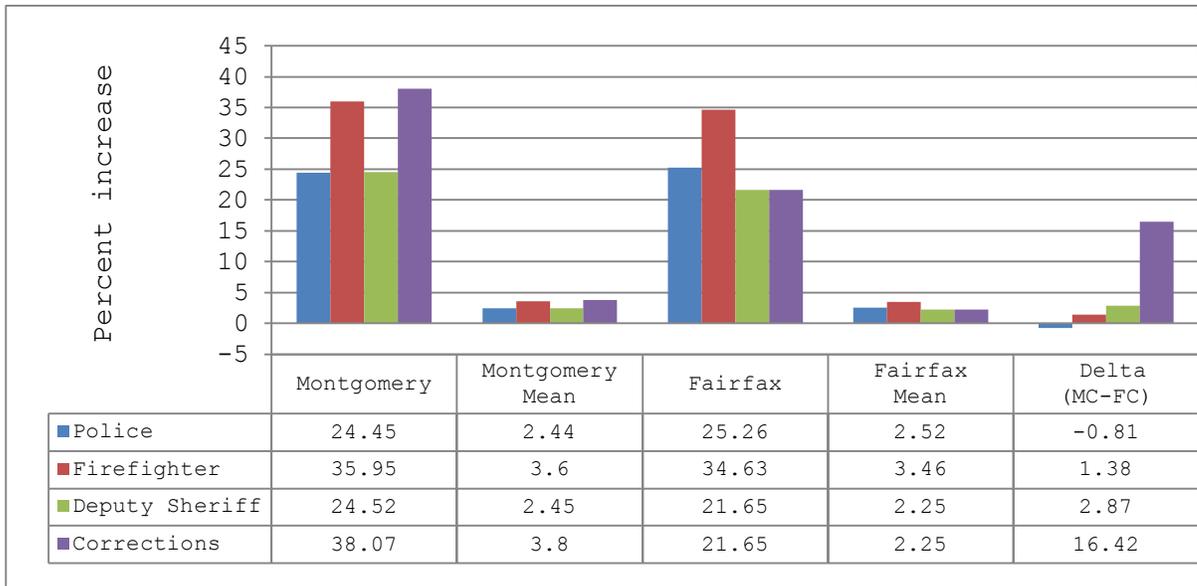


Figure 14f. Comparison Chart of Public Safety Entry Level Salary Increases, FY 2004-2014



Figure 14g. Comparison Chart of Aggregate Public Safety Entry Level Salary Increases, FY 2004-2014

Salary of Each Public Safety Group at the Completion of Three, Five, and Twenty Years of Service

Salary Data Analysis: Police

Assessing FY 2004-2014 salaries at three, five, and after twenty years of service for each of the public safety groups produces more complicated results. As demonstrated by table 11a, entry level salaries of unionized police officers in Montgomery County lagged behind Fairfax in both the rate of increase for starting salaries and in actual dollars; the gap also carries over to police with three years of experience as well as to the sergeant ranks. Table 12a and figure 15a show that at three years of service the base salary was \$259 lower in 2004, and the gap grew to \$1,124 by 2014, the latter amounting to a 2.34 percent salary difference. For Montgomery County police sergeants, the gap in 2004 was insignificant—only \$57. In FY 2014, however, the difference grew to minus \$4,292 or 7.02 percent in base salary for Montgomery police sergeants. After 20 years of service, though, the salary picture shifts significantly in favor of Montgomery County police; a plus \$5,688 (7.82 percent) higher base salary in FY 2004 grew to a difference of \$10,349 (11.25 percent) for Montgomery police sergeants.

Years of Service or Rank	Montgomery County		Fairfax County		2004-2014 Delta
	2004	2014	2004	2014	
PO II three years of service	\$41,277	\$55,384	\$44,724	\$56,588	-\$3,447 (8.35%) less in 2004 for Montgomery County Police. By 2014 the difference narrowed to minus \$1,204 (2.17%) less for Police officers.
Sergeant-five years of service	\$51,605	\$61,073	\$51,662	\$65,365	-\$57 (0.11%) less in 2004 for Montgomery. By 2014 the difference grew to -\$4,292 (7.02%) in base salary for Montgomery Police Sergeants
Sergeant after 20 years of service	\$78,383	\$102,326	\$72,695	\$91,977	+\$5,688 (7.82%) higher in 2004 for Montgomery Police Sergeants. By 2014 the difference was \$10,349 (11.25%) higher for Sergeants.

Table 12a. Comparisons of police salaries at various service longevity periods, 2004-2014

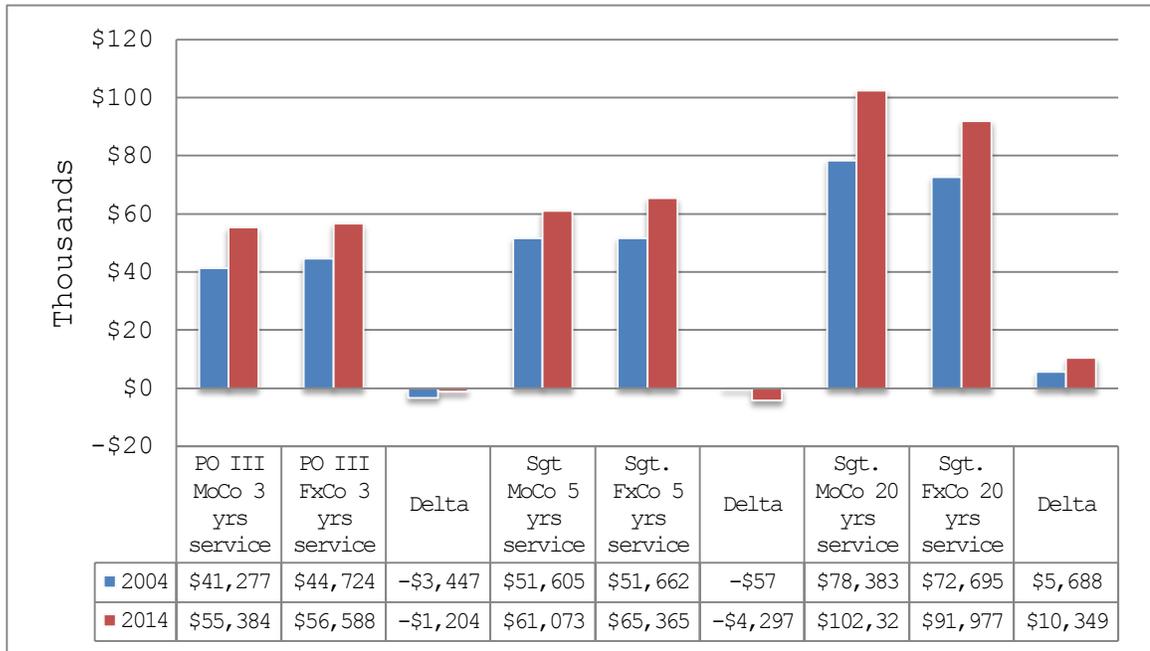


Figure 15a. Comparison Chart of Police Salaries at various longevity periods, FY 2004-2014

Salary Data Analysis: Firefighter and EMS

Of the four public safety groups in this study, the most significant difference in base salaries favoring a non-unionized workforce is in the fire service. Table 7 and figure 10 above show that the nonunion Fairfax County firefighters received nearly 5 percent more in general across the board increases from FY 2004-2014. Further, table 11b and figure 14c show that the entry level salaries in both FY 2004 and FY 2014 also favor Fairfax County non-unionized firefighters. Table 12b and figure 15b show that a firefighter after three years of service earns

Years of Service or Rank	Montgomery County		Fairfax County		2004-2014 Delta
	2004	2014	2004	2014	
Firefighter after 3 years of service	\$35,362	\$48,095	\$43,707	\$58,843	-\$8,342 (23.49%) less for Montgomery County firefighter in 2004. The gap continued through 2014, where it stood at -\$10,748 (22.35%).
Fire Lieutenant, five years of service	\$48,133	\$65,465	\$55,418	\$74,508	-\$7,285 (15.13%) less for Montgomery County in 2004. The gap continued through 2014 where it stood at -\$9052 (13.81%).
Fire Lieutenant, after 20 years of service	\$74,266	\$99,983	\$70,278	\$95,582	+3,988 more for Montgomery County (5.67%) in 2004. The gap in favor of Montgomery Firefighters continued through 2014 albeit a slightly lower percentage, where it stood at +\$4,401 (4.60%).

Table 12b. Comparisons of firefighter/EMS salaries at various service or longevity periods, FY 2004-2014

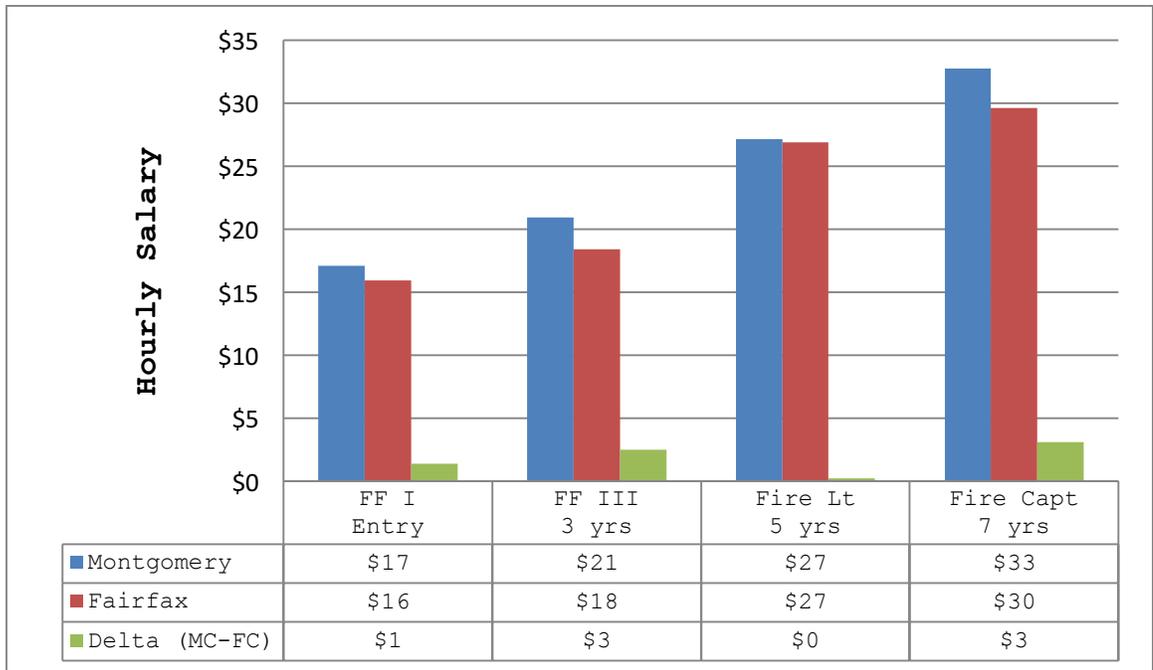


Figure 15b. Comparison of FY 2014 Firefighter Hourly Salaries

significantly more in Fairfax County—a difference of over eight thousand dollars in FY 2004, which grew to a difference of ten thousand dollars in 2014. Similarly, a fire lieutenant in Fairfax after five years of service earns \$9,052 (13.81 percent) more than a Fire Lieutenant in Montgomery County. It is not until a Fire Lieutenant completes 20 years of service that the salary advantage shifts to Montgomery County; \$3,988 (5.67%) more in base pay in 2004, and \$4,401 (4.60%) in FY 2014. Analyzing the base salary alone for the fire service may lead to the conclusion that the presence of a statutorily mandated collective bargaining for firefighters does not, for the most part, lead to consistent economic gains. Salaries at

almost every level, up to 20 years of service, are substantially higher in Fairfax County where collective bargaining is prohibited by state law. Indeed, policy makers and top level elected officials in Fairfax County attribute very high marks to Fairfax IAFF Local 2068 for its political acumen and advocacy on behalf of its members, a tactic more fully discussed later in the chapter. There is, however, another factor which may explain the apparent gap in fire service base pay favoring the non-unionized firefighters—the 24-hour “day” utilized by most fire suppression and emergency service departments in the United States, a legacy of a time when firefighters lived in the firehouses and did not work normal shifts.

Unique among all local government service providers, firefighters generally work a 24-hour shift and then are off duty for one, two, three, or more 24-hour days before returning to work. The federal Fair Labor Standards Act (FLSA) accommodates this schedule by allowing jurisdictions to avoid paying firefighters overtime pay after 40 hours of work (U.S. Department of Labor, Wage and Hour Division). Section 7(k) of the Act requires overtime to be paid only after the threshold for a “work period” is exceeded. For police officers the threshold is 43 hours in a seven-day period, while the firefighter threshold is 53 hours. FLSA

also allows jurisdictions to define "work period" as not fewer than seven days but not more than 28 days, permitting firefighters to be on duty for 212 hours in a 28-day work period before overtime pay is required. Jurisdictions adapt the 24-hour day to FLSA by scheduling firefighters for 21 or 28 days, leading to the one-on and one-off (or more) schedule. Montgomery County requires firefighters to work 24 hours and be off for the next 48 hours, a schedule which can still lead to involuntary overtime in a 21-day consecutive work period. Those instances are handled by giving the affected employee a "Kelly Day" adjustment (another day off). Fairfax County utilizes a 28-day work period, and schedules its firefighters to stay within the FLSA requirement. A derivative of the firefighter schedule is the number of "appearances" they need to make in a year. In Montgomery County, unionized firefighters have a 48-hour week (a 2,496-hour work year) equating to 104 appearances, minus any paid leave. Non-unionized Fairfax County firefighters have a 56-hour week (a 2,912-hour work year) equating to 121.3 appearances, minus any paid leave. Stated another way, the unionized firefighters in Montgomery County work 416 fewer hours annually than their non-unionized Fairfax County colleagues, and make 17.3 fewer appearances per year. The large salary differential in

favor of Fairfax County is eliminated and reversed once these factors are made part of the wage comparison. At entry the Montgomery County hourly salary is \$1.40 higher than Fairfax and the gap increases to \$2.50 after three years of service and continues. Figure 15b compares hourly earnings of firefighters of various ranks between Montgomery and Fairfax Counties.

Salary Data Analysis: Deputy Sheriffs

Table 11c shows that the entry level salary difference of deputy sheriffs in FY 2004 between the two jurisdictions was in favor of Fairfax County in the amount of \$769 but reversed slightly by 2014. Table 12c illustrates that the gap in favor of Fairfax County deputy sheriffs is quite large after three years of service. In 2004, the gap stood at nearly \$4,000 and it grew to nearly \$5,500 in 2014; but after five years of service the gap decreases to \$872 and after 20 years of service, a deputy sheriff sergeant in Montgomery County earns \$2,983 more in base salary, a difference of 3.37 percent over their Fairfax County counterparts.

Years of Service or Rank	Montgomery County		Fairfax County		2004-2014 Delta
	2005 ²⁸	2014	2004	2014	
Deputy Sheriff after three years of service	\$43,059	\$51,650	\$46,960	\$57,131	-\$3901 (9.06%) less for Montgomery County Deputy Sheriffs in 2004(5). The salary gap grew, both in dollars, -\$5481, and as a percentage (10.61%) by 2014
Deputy Sheriff, Sergeant, after five years of service	\$49,814	\$65,123	\$54,246	\$65,995	-4432 (8.89%) less for Montgomery County DS. By 2014, however, the gap narrowed considerably, -\$872 (1.34%).
Deputy Sheriff, Sergeant, after 20 years of service	\$72,924	\$91,423	\$72,695	\$88,440	+229 (0.31%) more for Montgomery County DS Sergeant in 2004(5). By 2014 the gap in favor of Montgomery grew both in dollars, +\$2,983 and as a percentage (3.37%).

Table 12c. Comparisons of Deputy Sheriff Salaries at Various Service or Longevity Periods

Salary Data Analysis: Correctional Officers

Entry level salaries for correctional officers were \$6,634 (8.15 percent) lower in FY 2004 for Montgomery

²⁸As a result of collective bargaining with UFCW Local 1994 MCGEO, Montgomery County created a separate pay plan for Deputy Sheriffs. The transition took place over two fiscal years.

County. From 2004 to 2014, salaries for this group of public safety employees increased by \$11,543 (38.07 percent) in Montgomery and by \$8,002 (21.65 percent) in Fairfax. Although the FY 2004-FY 2014 base salary increase in Fairfax County was lower—both in percentage and actual dollars—than Montgomery County, it was not sufficient to overcome Fairfax County's higher FY 2004 starting pay. Montgomery County correctional officers earned \$3,541 (16.46 percent) less in FY 2014 than Fairfax County. As illustrated in Table 12d below, correctional officers in Montgomery County earn substantially less than their Fairfax County colleagues except at the end of 20 years of service when the salary difference gives Montgomery County officers a slight edge of \$631 (0.71 percent) per annum. The significant differences in the actual salary level mostly favoring Fairfax County Sheriffs over the Montgomery County correctional officers can be partially attributed to the law enforcement component of a deputy sheriff in Fairfax County, as discussed in the entry level salary section above.

Years of Service or Rank	Montgomery County		Fairfax County		2004-2014 Delta
	2005 ²⁹	2014	2004	2014	
Deputy Sheriff after three years of service	\$43,059	\$51,650	\$46,960	\$57,131	-\$3901 (9.06%) less for Montgomery County Deputy Sheriffs in 2004(5). The salary gap grew, both in dollars, -\$5481, and as a percentage (10.61%) by 2014
Deputy Sheriff, Sergeant, after five years of service	\$49,814	\$65,123	\$54,246	\$65,995	-4432 (8.89%) less for Montgomery County DS. By 2014, however, the gap narrowed considerably, -\$872 (1.34%).
Deputy Sheriff, Sergeant, after 20 years of service	\$72,924	\$91,423	\$72,695	\$88,440	+229 (0.31%) more for Montgomery County DS Sergeant in 2004(5). By 2014 the gap in favor of Montgomery grew both in dollars, +\$2,983 and as a percentage (3.37%).

Table 12d. Comparisons of Deputy Sheriff and Correctional Officer Salaries at Various Service or Longevity Periods

²⁹As a result of collective bargaining with UFCW Local 1994 MCGEO, Montgomery County created a separate pay plan for Deputy Sheriffs. The transition took place over two fiscal years.

Impact of Statutory Collective Bargaining on Salaries

The data presented above generates mixed results. The overall cost of living adjustments, or market-based general wage adjustments, granted by both jurisdictions for the period 2004-2014 shows a marginal advantage for Fairfax County police officers and firefighters, and a marginal advantage for Montgomery County deputy sheriffs and correctional officers. Similar results are found for the increases in the starting salaries for the selected public safety employees under study in the two counties. The higher Fairfax County base salaries for firefighters can be attributed to a longer work week, while the higher salary for the correctional function being performed by deputy sheriffs is explained by their law enforcement status under Virginia law.

Is there a wage impact for unionized police and firefighters similar to the one found by Robinson (1974, 268-269) consisting of 4 and 6 percent in metropolitan jurisdictions and nearly 15 percent for police officers in the largest populations in their state? Are the findings by Bartel and Lewin (1988, 498-500) that collective bargaining for police officers led to a 6 percent increase in starting salaries, and could be responsible for as much as a 15 percent differential increase across all levels, replicated

in this study? These gains were made when collective bargaining was in its early stages. Later studies (Putchinski, 2005; Eagan, 2008) also found a significant positive relationship between collective bargaining and police salaries. With the exception of unionized correctional officers, these findings are not corroborated by this study. The ten-year gain by Montgomery County unionized police was 2.11 percent below the gains made by the non-union Fairfax police officers. Montgomery County firefighter's base pay increase for 2004-2014 was 4.98 percent below Fairfax County. Unionized deputy sheriffs and correctional officers' 2004-2014 increase is above the gains made by the non-union Fairfax deputy sheriffs, but only by 1.79 percent. Entry level salary increases from 2004-2014 lagged -0.81 percent for Montgomery County's police officers, but showed a marginal improvement for unionized firefighters of +1.32 percent and a more significant +2.87 percent for deputy sheriffs, when compared to their non-union colleagues in Fairfax County. Due to a salary plan negotiated for correctional officers in FY 2005 by MCGEO Local 1994, correctional officers in Montgomery County saw a 16.42 percent gain in their starting salaries over the Fairfax deputy sheriffs. The research findings here suggest that the union impact found

by other studies for police officers and firefighters is only manifested in Montgomery County at the upper end of pay scale, for employees with substantial seniority or longevity, which is a major criterion for unions in almost every facet of an employee's work life. It can be a deciding factor in promotions, selecting more desirable work shifts, and selecting annual leave ahead of less senior employees. The data presented in Tables 12a-12d demonstrates that salaries for Montgomery County public safety employees after 20 years of service are higher than for similarly situated Fairfax County employees. A police sergeant earns 11.25 percent more, a fire lieutenant earns 4.60 percent more, a deputy sheriff sergeant earns 3.37 percent more, and a correctional sergeant in Montgomery County earns 0.71 percent more than a deputy sheriff sergeant in Fairfax. These differences are due to the longevity steps negotiated by each of the unions in the Montgomery County collective bargaining agreements. Each pay plan contains increments or steps generally valued at 3.5 percent per step for each year of service, up to 15 years. Once an employee is at the top of the step no increments are given, only the general wage adjustment. Montgomery County police officers, deputy sheriffs, and correctional officers have an additional step, called a

longevity step after 20 years of service. By contrast the pay plans of Fairfax County contain eleven steps, with no additional increments available for service beyond 20 years. In the case of firefighters, the influence of the union concerning longevity steps is even more significant. Montgomery County firefighters represented by Local 1664 IAFF also have a 15-step pay plan and two longevity steps, one at the end of 20 years of service, and a second longevity step at the end of 28 years of service.³⁰ The impact of these two longevity steps on senior firefighters is considerable. Table 12e compares the hourly rate of firefighters with 21 and 29 years of service between the two jurisdictions.

The data strongly suggests that the presence of mandated collective bargaining plays a significant positive role in the base pay for firefighters at higher levels of seniority. The collectively bargained longevity steps result in a difference of an additional 5.7 percent higher hourly wage for a Montgomery County Firefighter II and an additional 8.9 percent for a Fire Captain after 20 years of service. For firefighters with pronounced—a gain of 9.37

³⁰The 20-year longevity step was negotiated in 1999 and the 28-year step was negotiated in 2008.

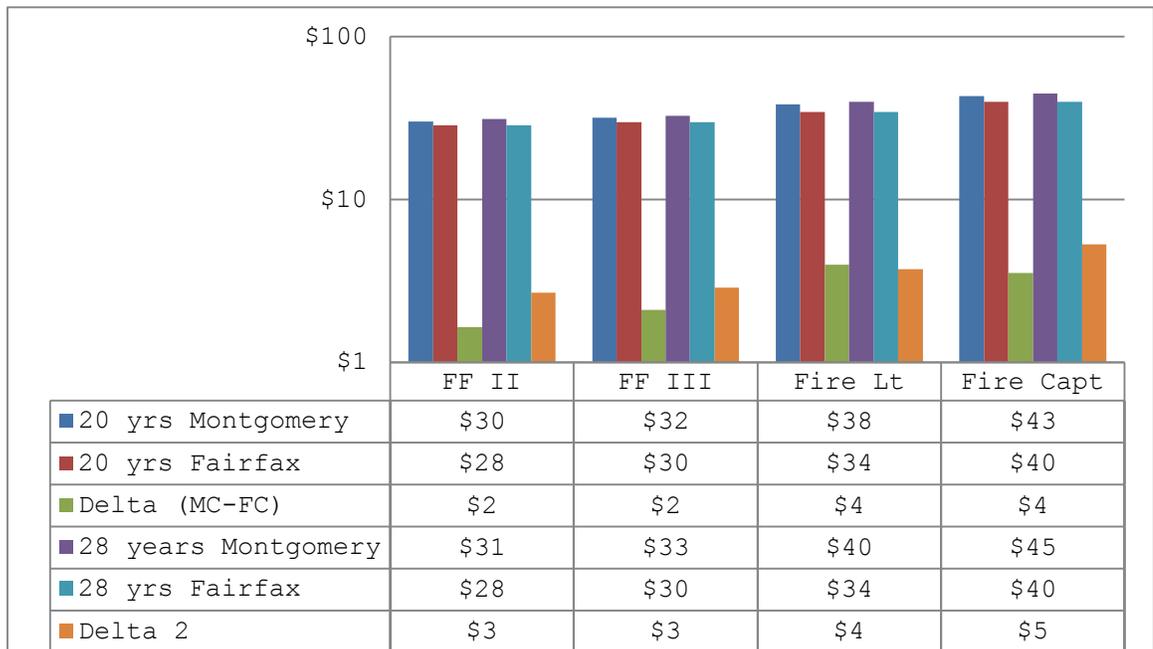


Table 12e. Comparison of Hourly Base Salary after 20 and 28 years of Service

service, the percent for a Firefighter II, and 28 or more years of difference is even more a 13.34 percent difference for a Fire Captain. Once they have successfully completed their probationary period firefighters and other uniformed public safety employees tend to remain in their positions until they are eligible for full retirement.³¹ In view of the fact that the normal retirement period is the completion of 25 years of service in both jurisdictions, the bargained longevity step eventually benefits all uniformed firefighters in Montgomery County, both in terms of an immediate hourly salary gain as well as having the

³¹Information derived from Montgomery County Personnel Management Review. Fairfax information derived from Office of the Fire Chief, and the Fairfax County Department of Human Resources.

extra salary boost count toward calculations for retirement benefits.

Comparison of Public Safety Health Insurance Benefits in Montgomery and Fairfax Counties

Comparing health insurance benefits between groups of employees in both jurisdictions is both more straightforward and complicated. Unlike salary plans which are differentiated in both jurisdictions by the different classes of employees, the same health insurance programs are offered to all employees within the specific locality; there is no difference if an employee is a police officer, deputy sheriff, firefighter, paramedic or correctional officer. On the other hand, it can become confusing and complicated given the number of health plans available and the ability of employees in both counties to insure any number of dependents in their household or opt out of coverage. Employees in both jurisdictions can select from three levels of coverage (self, self plus one, and family coverage) as well as a continuum of care from restrictive health maintenance organizations (HMO) to semi-restrictive point of service plans (POS), to unrestricted open access (OAP) plans. For the purposes of this analysis, the comparison will be limited to the HMO—since the same

vendor, Kaiser Permanente, offers identical plans to both jurisdictions—and to the open access plan; the latter is selected by a majority of employees in both jurisdictions. Montgomery County health plan data is derived from open enrollment materials mailed to each employee and operational knowledge as a result of being with the Montgomery County Office of Human Resources. Fairfax County health plan data is derived from information posted by the Fairfax County Department of Human Resources.

Health Insurance Comparisons

Montgomery and Fairfax both offer a Health Maintenance Organization (HMO) plan to their public safety employees operated by the Kaiser Permanente (KP) Foundation. Typical HMO plans limit members to seek treatment at facilities owned or health service providers employed by the HMO. Employees not wishing to be restricted to HMO facilities and providers can enroll in a Point of Service (POS) plan which offers coverage at two tiers, a standard option and a high option. The latter plans are typically self-funded, but both jurisdictions utilize third-party insurance carriers to actually manage the program. Non-HMO plans are administered by Care First Blue Shield in Montgomery County. The standard POS plan in Fairfax County is also administered by Care First, while the high option Open

Access plan is administered by Cigna Health Care.³² Both jurisdictions also have a low option health plan where the premium are less than the plans described above, but relies on higher copays and deductibles, and includes restrictions on specialists visits. Table 13a compares both the total cost of the Kaiser HMO insurance plan and employee cost share for Montgomery and Fairfax Counties' public safety employees during calendar year 2013.

	Montgomery County			Fairfax County			Employee share Delta
	Total Monthly Cost	County Share	Employee Share	Total Monthly Cost	County Share	Employee Share	
Employee Only	\$514.6	\$411.73	\$102.93	\$532.1	\$452.29	\$79.82	\$22.91 favoring Fairfax
Employee plus one	\$967.65	\$774.06	\$193.50	\$1,036.95	\$777.71	\$259.24	\$65.74 favoring Montgomery
Family coverage	\$1,523.44	\$1,218.73	\$304.67	\$1,542.75	\$1,157.06	\$385.69	\$81.02 Favoring Montgomery

Table 13a. Comparison of Monthly Employee Contributions for Kaiser HMO Health Plan (Calendar Year 2013)

³²Cigna became the administrator of the standard POS plan as well in CY 2014.

Kaiser HMO Analysis

As mentioned, HMOs require participating members to utilize medical providers and ancillary services that are directly employed by the HMO. Kaiser Permanente is the HMO provider for both counties and it is priced as a true insurance product—if the premiums do not cover all health related costs, the difference is absorbed by Kaiser. The reverse is also true; Kaiser keeps the surplus when its expenditures are below the income stream generated by the premiums. Table 13a compares the monthly premiums charged by Kaiser in both counties. Fairfax County's practice in terms of employee health insurance premiums is tilted towards individual coverage. It pays 85 percent of the premium (cost to employee is \$79.81) for single coverage and 75 percent of the cost (employee cost ranges from \$259.24 to \$385.69) for two party or family coverage. Montgomery County by contrast pays 80 percent of HMO premiums regardless of how many individuals are covered. Employee cost for single coverage is \$102.93 and for dependent coverage it ranges from \$193.50 to \$304.67. Determining the union-nonunion advantage for employees selecting Kaiser as their health provider depends upon whether single coverage, two party or family coverage is selected. Fairfax County's nonunion public safety employees

pay five percent less if they select single coverage, but pay 5 percent more than Montgomery County public safety personnel when covering additional family members, leading to a possible additional out-of-pocket cost of nearly one thousand dollars per annum if family coverage is selected.

Point of Service and Standard Option Plans

Fairfax County maintains the same premium subsidy for these plans as for the HMO; it pays 85 percent for the premium for individual coverage and 75 percent of the premium for employee plus one and family coverage. Montgomery County, in contrast pays 75 percent of the premium for individual as well as multi-person coverage. Thus the significant difference is at the single employee coverage level where Montgomery County employees pay 10 percent more of the cost, amounting to approximately \$250-\$320 per year. At the other levels, the employers of both jurisdictions pay 75 percent of the premium. Table 13b demonstrates that Fairfax County employees, paying the same percentage of the premium as Montgomery County, still pay more in actual dollars: from \$1,000 to \$1,600 annually depending upon how many lives are insured. There is, however, a potential explanation for this phenomenon which narrows the gap considerably. Fairfax County's health

	Montgomery County			Fairfax County			
	Total monthly cost	County Share	Employee Share	Total monthly cost	County Share	Employee Share	Employee Share Delta
Employee only	\$451.45	\$338.54	\$112.91	\$574.33	\$488.35	\$86.18	\$26.73 per month in favor of Fairfax
Employee plus one	\$780.88	\$585.67	\$195.21	\$1,129.07	\$846.80	\$282.27	\$87.06 per month in favor of Montgomery
Family coverage	\$1,314.85	\$986.13	\$328.72	\$1,660.51	\$1,245.37	\$415.13	\$86.28 per month in favor of Montgomery

Table 13b. Comparison of Monthly Employee Contributions for Point of Service Health Plan (Calendar Year 2013)

insurance policies embed prescription coverage in all their plans, while Montgomery County includes prescription plans only in the Kaiser HMO, requiring employees of the other plans to purchase separate drug coverage. As with the medical plans, the prescription plans are also self-funded, and administered by a third-party administrator—Caremark CVS. Tables 14a-14c present the costs of Montgomery County's employee prescription plans.

	Total Monthly Cost	County Share	Employee Share	Percent of premium
Employee only	\$128.33	\$98.25	\$32.08	25
Employee plus one	\$237.40	\$178.05	\$59.35	25
Family Coverage	\$367.90	\$275.93	\$91.97	25

Table 14a. Montgomery County Employees Prescription Plan. Caremark Standard Option \$10/\$20/\$35 Rx Plan All Employees 2013.

	Total Monthly Cost	County Share	Employee Share	Percent of premium
Employee only	\$221.10	\$96.24	\$124.86	56
Employee plus one	\$409.06	\$178.05	\$231.01	56
Family Coverage	\$633.92	\$275.92	\$357.99	56

Table 14b. Montgomery County Employees Prescription Plan. Police and Non-Union Employees High Option \$5/\$10 Plan 2013.

	Total Monthly Cost	County Share	Employee Share	Percent of premium
Employee only	\$223.99	\$96.34	\$127.74	57
Employee plus one	\$414.41	\$178.05	\$236.36	57
Family Coverage	\$642.20	\$275.92	\$366.27	57

Table 14c. Montgomery County Employees Prescription Plan. Firefighters, Correctional Officers and Deputy Sheriffs High Option \$4/\$8 Calendar Year 2013.

Discussion of Prescription Benefits

Public safety employees in Montgomery County enrolled in one of the self-funded medical plans are able to select from two prescription plans administered by Caremark CVS. The standard option, (Table 14a) requires co-pays for each prescription; \$10 for generic, \$20 for preferred brand name medications, and \$35 for brand name drugs that have a generic equivalent. Police officers can select a high option alternative which limits the copays to \$5 for generics and brand name drugs with no generic equivalent and \$10 copay for drugs with a generic equivalent. Firefighters, deputy sheriffs and correctional officers can also select a high option alternative with a copay of \$4 or \$10. As illustrated in table 14c, and figure 16, the premiums for these two high options are significantly

greater than the premiums for the standard option, due to the county pegging its cost to the dollar equivalent of 75 percent of the standard plan. Employees selecting the high option plans pay between 56 and 57 percent of the premium, amounting to a range of \$1,000 to over \$3,000 annually. (Montgomery County Maryland Office of Human Resources, 2014).

Public safety employees in Fairfax County participate in the same benefit programs that are provided to other employees, and as mentioned above, do not have a separate carve out for prescription coverage. The self-funded insurance programs in Fairfax County share the same plan design for coverage of prescription drugs: a deductible of \$50 per individual and \$100 per family, co-pay of seven dollars for generic drugs, co-pay of 20 percent for brand prescription), and a co-pay of zero percent for a brand name drug with a generic equivalent (limited to \$100 per prescription). Out of pocket payments are capped at \$1,000 for individual coverage, and \$2,000 for individual plus one or family coverage (Fairfax County OHR 2013).

Given the different plan designs between Fairfax and Montgomery Counties, a direct comparison to ascertain if one is superior to the other may not yield a valid result.

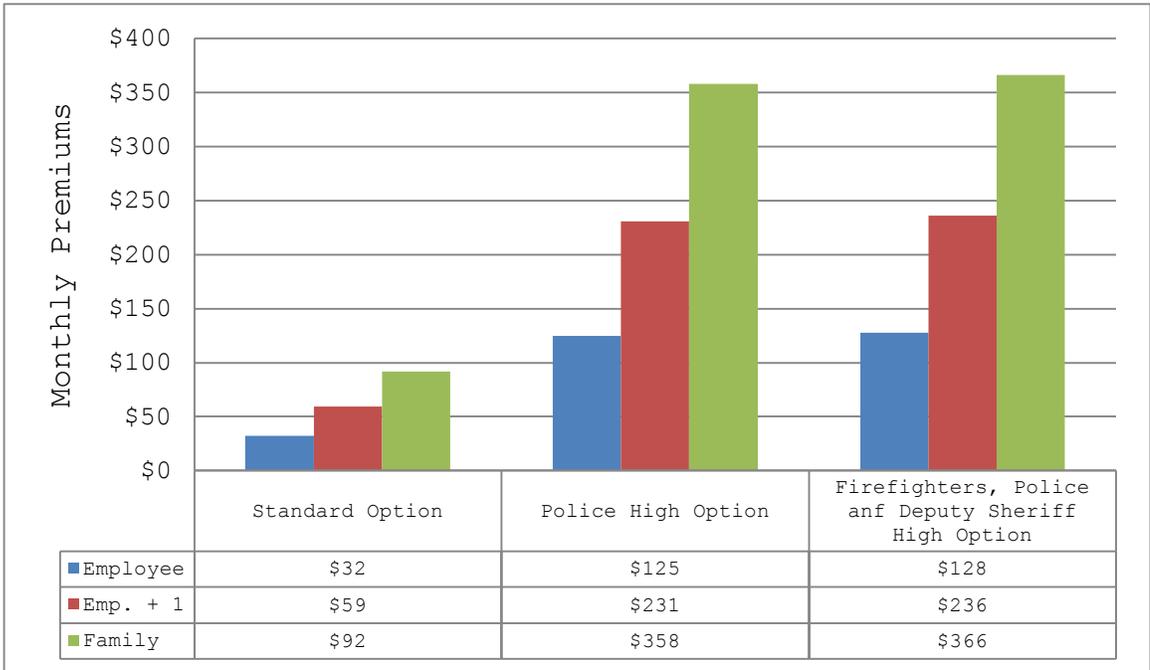


Figure 16. Comparison of Montgomery County Monthly Premiums for Prescription Coverage

Both jurisdictions incentivize the use of generics, and both have different types of copays for non-generic medication. Montgomery County has a fixed dollar amount for co-pays while Fairfax uses a percentage of the cost with a fixed dollar upper limit. As a result of collective bargaining, Montgomery County public safety employees have a choice to enroll in one of two prescription plans or not to enroll at all. Employees of Montgomery County are also able to buy up; that is, they can opt for a plan with a much lower co-pay and no deductibles, but as Table 14c demonstrates, the cost for this option in terms of additional premiums is considerable, ranging from slightly

over \$1,000 annually for employee only coverage to over \$3,000 annually for family coverage. Fairfax County embeds its prescription plan in the medical health plan, thus public employees do not have the opportunity to either upgrade or drop this coverage. It also explains why the medical health insurance premium for public safety employees in Fairfax is \$1,000 to \$1,600 higher per year despite the fact that both jurisdictions peg the employee premium share at 25 percent.

Collective Bargaining and Health Benefits—Discussion and Analysis

Collective bargaining has enabled public safety employees in Montgomery County to have added flexibility in terms of the prescription drug benefit. They can opt out of coverage and still maintain medical insurance, or they can select a higher level of drug benefits, albeit at a greater cost. The benefit was even more robust prior to FY 2012. Employee premiums for both the standard plan and the high option plan were set at 25 percent of the cost, regardless of the level of coverage. That is to say, the level of employer subsidy was not anchored to a specific plan. Thus for a relatively small dollar difference, an employee could select a higher option plan, and have the benefit of a lower co-pay. This advantage, however, was eliminated by

Montgomery County. As part of its cost cutting effort to balance the FY 2012 budget, the Montgomery County Council made a number of unilateral changes to union and non-union employee health benefits. The council equalized the medical insurance premiums at 25 percent for union and nonunion employees. Prior to July 1, 2011 union employees paid 20 percent of the cost. The council also modified the prescription plans by adopting the Standard Option Plan as the base for all prescription plans. The employee cost share was set at 25 percent and employees selecting the high option plan have to make up the difference. Despite heavy union opposition, and the added financial costs to employees the changes were supported by all nine members of the County Council and have remained in force. (Montgomery County Council 2011a). A more detailed discussion of the unilateral measures taken by the Montgomery County can be found in the next chapter. Overall, it appears that the existence of collective bargaining in terms of health insurance benefits has resulted in a marginal advantage over the non-unionized public safety employees of Fairfax County.

Comparison of Retirement Benefits for Public Safety Employees between Montgomery and Fairfax Counties

Discussion of public policy issues related to public employee pension plans

Defined benefit pension plans for government employees tend to generate controversy and have become targets for reform among fiscally conservative minded advocacy groups and elected officials. The most recent cycle of clamoring for change began approximately in 2010 as state and local government budgets suffered large shortfalls due to the global and national economic recession. Defined benefit pension plans, guaranteeing a certain dollar benefit for the life of a retiree, were especially hard hit; their investment income took a plunge and many governments were unable or unwilling to make their required annual payments to keep the plans fiscally sound.

Bringing the pension issue to national attention was a study conducted by the Pew Center on the States in 2010. Pew assembled data on current and future obligations of the retirement systems in all 50 states and found that the combined obligation for future employee retirement payments amounted to \$3.35 trillion, but the combined assets of the plans totaled only \$2.35 trillion, leaving a \$1 trillion shortfall. Pew further noted that this number could be understated since it was based on fiscal year 2008 and did

not account for the market downturn during the latter part of 2008 and early 2009. Another reason why the \$1 trillion gap was considered to be a conservative estimate relates to the practice of "smoothing", whereby gains and losses of one year are smoothed over several years in order to avoid posting sharp gains and losses from year to year (Pew Charitable Trusts 2013, 1-5). Utilizing a four-point methodology whereby two points were awarded for having a funded ratio of at least 80 percent, one point for having a funding liability under the cost of payroll, and another one point for making at least 90 percent of the actuarially required annual contribution for the last five years, Pew graded the performance of the states. Of the 50 states, only 16 were graded as solid performers, meriting a score of four, while 15 states were in need of improvement, with scores of two or three. Receiving a score of zero or one point were 19 states which merited "serious concerns" according to Pew (Ibid., 42). Eight of these states—Alaska, Colorado, Illinois, Kansas, Kentucky, Maryland and New Jersey—were ranked at the bottom, with a grade of zero due to their high unfunded liability and lack of meaningful progress towards a resolution (Pew Charitable Trusts 2013). Pew also examined the status of pension funding in 2009 for the most populous cities in each state, in addition to

other cities with populations of at least 500,000 ending up with 61 jurisdictions (Ibid.,). Pew found that the funding gap amounted to \$99 billion, but the results were uneven. During the economic downturn, at least 16 cities were at 80 percent funding or better and paid at least 90 percent of their required payments; more than half of the cities in the sample, 35 jurisdictions, made at least 90 percent of the required payments,³³ while 25 cities paid 100 percent of their obligations (Ibid., 4). At least six cities were found to regularly pay less than two-thirds of the recommended contributions.³⁴

What are the causal factors for the "crisis" in public sector pension plans?

An obvious response is to point to the economy, many pension plans grossly overestimated the rate of returns on their investments, and when the economy took a downward turn, their future liabilities increased greatly. There are other potential answers as well. Pew found that many jurisdictions' failure to make payments recommended by their actuaries, and approval of benefit enhancements without consideration of their costs, were significant

³³The cities include: Albuquerque, Baltimore, Charlotte, Dallas, Denver, Des Moines, Los Angeles, Milwaukee, Salt Lake City, San Antonio, San Francisco, Seattle, Sioux Falls, Virginia Beach, Washington DC, and Wichita.

³⁴These cities include: Charleston, Chicago, Little Rock, New Orleans, Omaha, and Portland, Oregon.

contributors to pension plans being underfunded (Pew Charitable Trusts 2013, 1). Some observers blamed the crisis on public sector unions and the willingness of public sector managements to bow to union pressure in order to enhance pension benefits (DiSalvo 2010; Brooks 2010). Cogburn and Kearney (2010) attempted to discern the factors associated with high levels of unfunded pension and health benefit liabilities. A multiple regression analysis was run on the potential explanatory variables of managerial influence (specifically financial and human capital management), political influence, fiscal influence, and other influences to determine the strength of the relationship of each independent variable on the magnitude of the unfunded liabilities. The strongest relationship between these potentially explanatory factors and the size of the unfunded liability turned out to be managerial influence in the financial arena: having a long fiscal time perspective, budgetary timeliness and transparency, revenue and expenditure balance, effective controls over finances, and procurement plus reporting effectiveness. The researchers asserted that, "strong financial management in a state reflected in greater effort to fully fund the plan, and as a consequence, significantly lower pension obligations . . . financial management is among the

strongest influences on the levels of pension funding.” (Cogburn and Kearney 2010, 102-103). Fiscal constraint as measured by a state’s per capita debt ratio was also a significant variable; lower debt ratios meant lower unfunded pension liabilities. Other causal factors include public employee density and the professionalism of the legislature. States that have more professional legislatures, measured by the level of non-partisan support services available to lawmakers, had lower unfunded pension obligations (Cogburn and Kearney 2010, 103). In contrast to DiSalvo and Brooks, Cogburn and Kearney found a negative relationship for public union density, suggesting that the level of unionization was not as strong an influence on the size of the unfunded liability. Though failing to attain statistical significance, the negative coefficient estimate did prompt the researchers to suggest that unions may have shifted their emphasis to seeking changes that ensured the sustainability of future benefits already negotiated, and away from those which would further jeopardize the future retirement of current employees. As expected, however, public employee density, the number of state employees per 10,000 populations, had a positive impact on the unfunded liability.

An analysis of 150 state and local pension plans by the Center for Retirement Research at Boston College (2015) tends to support the conclusions reached by Cogburn and Kearney. The researchers divided the plans into three categories (good, average, and bad) based on their funded ratios from 2001-2013, and tracked three variables: their investment returns, the jurisdictions' payment to the annual required contribution (ARC) and payment towards the unfunded actuarial accrued liability (UAAL).³⁵ They found that the economic downturn hurt all plans, regardless of the typology, causing an increase in the UAAL, and thus leading to a reduction of the plans' funded status (Center for Retirement Research 2015, 4). Payments also fell short to the ARC and UAAL irrespective of whether they were in the good, average, or bad category. Contributions to the poorly funded plans, however, were significantly lower than contributions made to the well-funded plans, and the actuarial experience of the poorly funded plans was "worse than expected." (Center for Retirement Research 2015). One response by jurisdictions in the "bad" category to their poorly funded ratio was to seek to cut benefits as a way of reducing the UAAL. The study named the New Jersey Teachers Plan as one of the worst funded in the nation due to the

³⁵The ARC can be considered the normal cost, while the UAAL is an amortized cost of paying future benefits.

fact that state has never made the required normal cost contribution, tended to ignore the UAAL, and eliminated cost of living adjustments for all current and future retirees (Ibid., 4-5). Jurisdictions with strong financial managements, as also found by Cogburn and Kearney, tend to want to more fully fund their obligations and, as a result, their funded ratios did not decline as much as in jurisdictions that skimmed on fully paying the ARC and the UAAL. Pew's study of the pension plans of 61 cities also supports the findings of Cogburn and Kearney. Pew found that half of the cities in their sample saw a drop of 8 percent in their funded status but,

the [economic] downturn was not the decisive factor that separated cities with the best funded pension systems from those with poorly funded ones. Whether a city was fiscally disciplined made a big difference in how it fared. Cities with pension plans that kept up with their payments—consistently making the 'annual recommended contribution' calculated by their actuaries—weathered the financial downturn better than their counterparts. (Pew Charitable Trusts, 2013; 7)

Has the end of the economic recession improved the funded status of public sector defined benefit pension plans?

On the whole, the dire predictions that the decline in the funded status of public sector pension plans will cause huge dislocations and disruptions in state and local government budgeting and affect the ability to provide services has not been borne out. That is not to state that

the funding ratios for all or most plans are in the 80 percent or above, but that indicators are moving in the positive direction. In 2013 the largest city and county pension plans increased their funding ratio from 69 to 73 percent (Pensions and Investments Research Center 2014). Public pension plan sponsors paid 83 percent of the actuarially required contribution amount (Center for Retirement Research 2015, 4). Starting in 2014, defined benefit pension plans could no longer utilize multi-year "smoothing" to average out gains and losses; they will have to report the current market value. Researchers estimate that if the stock market continues to be "healthy" most public pension plans should be at least 80 percent funded by 2017 (Center for Retirement Research 2015, 6).

How did the pension plans of Montgomery and Fairfax Counties fare during 2002-2014?

The retirement systems of both jurisdictions saw a decrease in their funding status during 2009-2013, but due to the fiscal discipline exercised the decline was managed and the funding status increased in 2013 and 2014, where all plans are now above 80 percent, the minimum threshold needed to be considered as being on the plus side of actuarial concerns. Both jurisdictions' pension systems

Fiscal Year	Fairfax Police Percent Funded	Fairfax Uniformed Services Percent Funded	Montgomery Public Safety Percent Funded
2002	95.7	102.3	90.0
2007	87.9	83.6	80.0
2008	89.9	85.2	83.3
2009	88.0	85.4	78.0
2010	81.7	79.5	77.8
2011	79.3	76.7	78.1
2012	80.5	77.7	77.0
2013	82.1	77.3	79.0
2014	86.8	85.2	84.2

Table 15. Funded Status of Montgomery and Fairfax Counties' Defined Benefit Pension Plans, 2002-2014

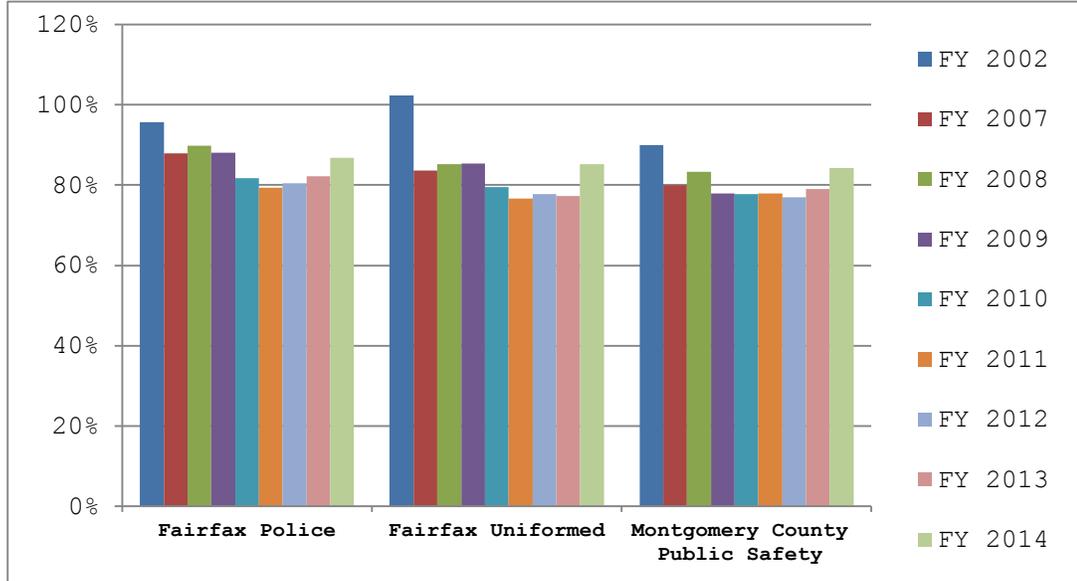


Figure 17. Chart of the Funded Status of Montgomery and Fairfax Counties' Defined Benefit Pension Plans, 2002-2014

control significant resources: Fairfax County's combined largest plan in the nation, while Montgomery County's combined plans have over \$4.1 billion in assets and is the 392nd largest pension plan in the nation (Pensions and Investments Research Center, 2014). Table 15 and figure 17 highlight the funded status of these jurisdictions' pension and retirement plans from 2002 to 2014.

Comparison of Montgomery County and Fairfax County Defined Benefit Pension Payments

In the retirement and pension area, there are fewer options in terms of base coverage, but potential retirees can select a number of alternatives in case they predecease their spouse or domestic partner. Utilizing the same methodology as with the health insurance benefits, the pension plan analysis will consist of comparing the different public safety employees' base salary at the end of 25 years of service, and calculate the full pension that would be paid without extending it to their spouse or domestic partner. Thus it is a valid apples-to-apples comparison, enabling the researcher to isolate the impact of collective bargaining on this benefit. Pension data for both jurisdictions was obtained from their plan

descriptions and the required Comprehensive Annual Financial Report (CAFR) filed by both jurisdictions.

Fairfax County Public Safety Retirement Plans

For retirement benefits, Fairfax County differentiates between police officers and other public safety employees. The former belong to the Police Officers' Retirement System, while the latter are members of the Uniformed Retirement System, which includes uniformed or sworn employees in the following groups: fire and rescue, Sheriff's departments, public safety communicators, animal wardens, helicopter pilots and some former Park Police Officers. The plans are similar in design, with one crucial difference, police officers have higher multipliers (2.8 percent vs. 2.5 percent) and donate more of their salary than firefighters and deputy sheriffs (10 percent vs. 7.08 percent respectively). Police officers also do not pay into the federal Social Security program. Other elements such as minimum time needed to retire, or the calculations of average final earnings are identical. Table 16 highlights

Montgomery County Retirement Plans

Pensions and retirement plans are mandatory subjects of bargaining under the labor laws enacted by the Montgomery County Council and are demonstrated by the

Pension plan typology	Amount contributed by pension plan member	Years of service for normal retirement	Pension multiplier and average final earnings calculation (AFE)	Cost of living Increases	DROP³⁶ plan
Police officers retirement system	10% of salary, no Social Security deductions	Age 55 with 5 years of service or 25 years of service at any age. All unused sick leave converted for additional service credits.	2.8% of the average of the highest 36 consecutive months of salary. The sum is multiplied by 3%.	Based on Washington Area CPI-U, capped at 4%, with another one percent if the plan achieved an actuarial surplus for the fiscal year.	Three-year DROP. Rate of return earns 5%.
Uniformed Employees Retirement System Plan D (1997-2013)	7.08% of salary. Deductions are also made for Social Security	Age 55 with 5 years of service or 25 years of service at any age. All unused sick leave converted for additional service credits.	2.5% of the average of the highest 36-months consecutive salary. Sum is multiplied by 3%. Retiree also receives a pre-Social Security benefit of 0.3% of AFE, paid until eligible for Social Security.	Based on Washington Area CPI-U, capped at 4%, with another one percent if the plan achieved an actuarial surplus for the fiscal year.	Three-year DROP. Rate of return earns 5%.
Uniformed Employees Retirement System Plan E (Post January 1, 2013 hires)	Same as above.	Age 55 with 6 years of service or 25 years of service at any age. Unused sick leave conversion is limited to 2080 hours.	Same as above.	Same as above.	Same as above.

Table 16. Elements of Fairfax County Public Safety Retirement Plans

³⁶The Deferred Retirement Option Program (DROP) is a means of providing employees who choose to work beyond their normal retirement dates, the flexibility to elect to receive some of their retirement benefits in a lump sum and sacrifice the opportunity to earn additional retirement benefits.

different retirement programs for police officers, firefighters, deputy sheriffs and correctional officers. tables 17a and 17b detail the major elements of these pension plans (Montgomery County Employee Retirement Plans).

Discussion and Analysis

Tables 16, 17a and 17b demonstrate two specifics: (1) the differences between Montgomery and Fairfax Counties in the formulae used to calculate retirement benefits for public safety employees, and (2) that differences also exist within the jurisdictions between the various public safety services. Police officers in Fairfax County pay 10 percent of base salary into their retirement plan, while firefighters and deputy sheriffs pay 7.08 percent, a difference of nearly three percent of salary. Offsetting this apparent economic encumbrance is the fact that Fairfax County police officers do not pay into, nor receive any benefits from, the Social Security trust fund, which would be a deduction of an additional 6.2 percent on income up to \$117,000 (2014 rate). Factoring the Social Security payments into the analysis shows that firefighters and deputy sheriffs pay a combined rate of 13.28 percent of salary, while police officers contribute 10 percent, for a

	Police Officers	Firefighter/EMTs
Contribution by member	6.75% of salary up to Social Security Wage Base (SSWB), 10.75% above SSWB.	7.50% of salary up to SSWB, 11.25% above SSWB.
Years of service for normal retirement	Age 55 with 15 years of service, or 25 years of service, at any age. Unused sick leave can be converted for a maximum of 4,136 hours of additional service	Age 55 with 15 years of service or 20 years of service, at any age. Unused sick leave can be converted for a maximum of 4,136 hours of additional service
Pension multiplier and average final earnings (AFE) calculation.	2.4% of top 36 months AFE up to Social Security eligibility. Benefit is recalculated at normal Social Security eligibility to 1.65% of AFE, plus 2.4% of contributions made above the SSWB.	2.5% of top 36 months AFE for 20 years of service. 2.0% for 21-31 years of service. Benefit is recalculated at normal Social Security eligibility to 1.72% for first 20 years and 1.37% for 21-31 years of service.
Cost of living increases	Up to 3% for change in CPI and 60% of any CPI increase above 3% (Max 7.5% increase). For service after July 1 2011, the CPI is capped at 2.5%	Up to 3% for change in CPI and 60% of any CPI increase above 3% (Max 7.5% increase). For service after July 1 2011, the CPI is capped at 2.5%
DROP Plan	Three year DROP. No guaranteed rate of return.	Three year DROP, 8.25% rate of return. For members enrolled after July 1 2013 it drops to 7.50%.

Table 17a. Elements of Montgomery County Public Safety Retirement Plans-Police Officers and Firefighters

savings of 3.28 percent per year. Differences in public safety contribution rates also exist in Montgomery County. Police officers contribute 6.75 percent on salary up to

	Deputy Sheriffs	Correctional Officers
Contribution by member	6.75% of salary up to SSWB, 10.5% above it.	6.75% of salary up to SSWB, 10.5% above it.
Years of service for normal retirement	Age 55 with 15 years of service, or 25 years of service and age 46. Unused sick leave can be converted for a maximum of 4,136 hours of additional service.	Age 55 with 15 years of service, or 25 years of service and age 46. Unused sick leave can be converted for a maximum of 4,136 hours of additional service.
Pension multiplier and average final earnings (AFE) calculation.	2.4% of average of top 36 months of earnings for 25 years of service, 2.0% for 26-31 years of service. Benefit is recalculated at normal Social Security eligibility to 1.65% of AFE, plus 2.4% of contributions made above the SSWB which declines to 2% above Social Security wage base for 26-31 years of service.	2.4% of average of top 36 months of earnings for 25 years of service, 2.0% for 26-31 years of service. Benefit is recalculated at normal Social Security eligibility to 1.65% of AFE, plus 2.4% of contributions made above the SSWB which declines to 2% above Social Security wage base for 26-31 years of service.
Cost of living increases	Up to 3% for change in CPI and 60% of any CPI increase above 3% (Max 7.5% increase). For service after July 1 2011, the CPI is capped at 2.5%	Up to 3% for change in CPI and 60% of any CPI increase above 3% (Max 7.5% increase). For service after July 1 2011, the CPI is capped at 2.5%
DROP Plan	No DROP plan.	No DROP plan. ³⁷

Table 17b. Elements of Montgomery County Public Safety Retirement Plans-Deputy Sheriffs and Correctional Officers

10.75 percent for wages exceeding the Social Security Wage Base (SSWB). Firefighters in Montgomery County pay 7.50 percent on salary up to 11.25 percent for wages exceeding

³⁷MCGEO negotiated a DROP plan for Deputy Sheriffs and Correctional Officers beginning July 1, 2015.

the SSWB. Correctional officers and deputy sheriffs follow the same contribution rate as police officers, which is 0.75 percent per year lower than what firefighters pay into their retirement plans. It appears from the above data, that collective bargaining only has a marginally positive result on the percentage of salary paid by the employees. Montgomery correctional officers and deputy sheriffs pay 0.33 percent less per year; police officers pay 5.75 percent less, but if the FICA deduction is factored in, the gain reverses in favor of police officers in Fairfax County by 2.95 percent per year. A more substantial tilt towards Montgomery County public safety employees existed when the percent of salary paid towards pensions was 2 percent less for each group of employees. As part of the budget process for Fiscal Year 2012, the Montgomery County Council unilaterally increased employee contributions to the defined benefit pension plans by 2 percent for all participants, and limited future cost of living increases for retirees to 2.5 percent beginning July 1, 2011 (See the next chapter for additional details).

Additional Pension Research Methodology and Findings

More important than the variation in contribution rates is the actual pension allowance that a public safety employee expects to receive upon retirement. As with

contribution rates, there are differences between the two jurisdictions and among the various public safety employees in each jurisdiction. For the purposes of this analysis the pensions for all public safety employees are calculated using the stated formula in existence for a normal retirement, assuming 25 years of service.

Police officers in Fairfax County have the most straightforward formula to calculate benefits: average final earnings (AFE) using the highest average 36 months of salary multiplied by 2.8 percent, multiplied by the number of years of service. The preliminary figure is then multiplied by 3 percent: or $(AFE \times 2.8\% \times 25) + (N \times 1.03) = \text{Pension}$. Assuming an AFE of \$86,000 the pension calculation comes to $\$86,000 \times 2.8\% \times 25 = \$60,200$ plus \$1,806 (3%) = \$62,006. Cost of living increases are based on the Consumer Price Index for All Urban Consumers (CPI-U) and are capped at 4 percent, but can increase another one percent if the investment income exceeds the actuarial assumption rate of return of 7.50 percent compounded annually. Firefighters, deputy sheriffs (and correctional officers) in Fairfax are in a separate defined benefit plan³⁸. Their formula also allows full retirement after 25

³⁸Although there are five separate, but related, Plans (A, B, C, D, and E) in the Uniformed Retirement System, the analysis is based on Plan D,

years of service, and the AFE is based on top average 36 months of pay, as in the case of police officers. The major difference is in the multiplier, which is 2.5 percent rather than 2.8 percent and the inclusion of a pre-Social Security multiplier of 0.3 percent of AFE multiplied by the number of years of service which is paid until the retiree is eligible for unreduced Social Security benefits. Assuming an AFE of \$86,000 and 25 years of service, the retirement allowance for this group of public safety employees is calculated by: $AFE \times 2.5\% \times 25 + (N) \times 1.03 = P$. For pre Social Security retirees, the amount is then boosted by an additional 0.3 percent of AFE per year of service. To wit: $\$86,000 (AFE) \times 2.5\% \times 25 + (53,750) \times 1.03\% = \$55,362$ base retirement benefit. The pre FICA or Social Security benefit formula of: $0.3\% \times AFE (\$86,000) \times 25$ (years of service) $\times 1.03\%$ (multiplier) boosts the amount by 8.33 percent or \$6,643 per year, bringing the pre-Social Security retirement payment for Fairfax County firefighters, deputy sheriffs and correctional officers to \$62,005 per year.

Public Safety employees in Montgomery County all contribute to and receive Social Security benefits, and each plan contains a provision to reduce the retirement

which contains over 90 percent of participants (Fairfax County Government 2014c).

benefit once the retiree reaches eligibility for an unreduced benefit. Because of the ability to bargain pension benefits, the multiplier for police officers, firefighters, deputy sheriffs and correctional officers varies somewhat and differences exist in the number of years required to obtain a full benefit. Police officers can retire at age 55 with at least 15 years of service, or at any age after 25 years of service. Assuming an AFE of \$86,000, and 25 years of service, the pension is calculated as follows; $AFE \times 2.4\% \times 25 = P$ or \$86,000 multiplied by 2.4 percent (\$2,064) multiplied by 25 = \$51,600. Upon reaching eligibility for normal social security benefits, the multiplier is reduced to 1.65 percent for earnings up to the SSWB, and 2.4 percent for earnings above it. The pension allowance for the police officer in this example would be reduced to \$36,230.³⁹ Firefighter pensions follow a similar calculation with one major exception; as a result of collective bargaining they are able to retire at any age with a minimum of 20 years of service with no reduction in benefits. Assuming an AFE of \$86,000 and 25 years of service the pension for a Montgomery County Firefighter is calculated by using the higher multiplier of 2.5 percent

³⁹This example is using the SSWB of someone born in 1954 which is \$81,972 (\$86,000 FAE - \$81,972). Covered earnings, leaving \$4,028 to be calculated at the 2.4% multiplier.

for 1-20 years of service and the lower multiplier of 2.0 percent for 21-25 years of service: $AFE \times (2.5\% \times 20) + AFE \times (2.0\% \times 5) = P$ or $\$43,000 + \$8,660 = \$51,600$. Thus a firefighter will receive the same pension amount as a police officer until Social Security eligibility is reached. At that time, the benefit is recalculated using the lower multipliers of 1.718 percent for the first 20 years of service and 1.375 percent for all service beyond 20 years reducing the pension payment to \$35,354 per year, nearly \$900 lower than a Montgomery County police officer. Montgomery County correctional officers and deputy sheriffs are represented by the same union (Local 1994 UFCWU) and have the same defined benefit plan. They are allowed to retire after 15 years of service and age 55, or after 25 years of service and 46 years of age. The multiplier is 2.4 percent for credited service up to 25 years and 2 percent for 26-31 years of credited service. After reaching eligibility for Social Security, the multiplier drops to 1.65 percent of the AFE for earnings up to the Social Security Wage Base, and 2.4 percent for earnings above the SSWB for the first 25 years of service. The multiplier for credited service for 26-31 years drops to 2 percent of AFE after reaching Social Security. For example,

Pre-Social Security Pension Formula for Correctional Officers and Deputy Sheriffs:

$$\text{AFE} \times (2.4\% \times 25) + \text{AFE} \times (2.0\% \times 26-31) = P$$

Post Social Security Pension Formula for Correctional Officers and Deputy Sheriffs:

$$\text{SSWB AFE} \times 1.65\% + 2.4\% \times (\text{post SSWB AFE} \times 25) + 2\% \times (\text{post SSWB AFE} \times 26-31) = P$$

Taking a hypothetical AFE of \$86,000 and 25 years of service the retirement allowance for correctional officers and deputy sheriffs comes to \$51,600, until eligibility for unreduced Social Security payments and drops to \$36,230 per year thereafter.⁴⁰ Table 18 and figure 18 compare the retirement allowance paid to public safety employees in Montgomery and Fairfax Counties using an AFE of \$86,000 and 25 years of completed service.

Impact of Statutory Collective Bargaining on Public Safety Pension Plans

As mentioned earlier, retirement and pension plans are mandatory subjects of bargaining in Montgomery County, and each union has negotiated pension benefits for their members. Is there a union effect on pension benefits? The evidence argues against it. Table 18 clearly demonstrates that public safety employees in Fairfax County have a

⁴⁰See Fn #24

Montgomery County

Fairfax County

	Police Officers	Firefighter /EMT	Deputy Sheriffs/ Correctional Officers	Police Officers	Firefighter /EMT	Deputy Sheriffs/ Correctional Officers
Pension up to normal Social Security	\$51,600	\$51,600	\$51,600	\$62,006	\$62,005	\$62.005
Pension after normal Social Security	\$36,230	\$35,354	\$36,230	\$62,006	\$55,362	\$55,362
DROP Program	Three years, market rate	Three years, 8.25% rate. 7.50% for entrants as of July 2013	Three years, market rate	Three years, 5% rate of return	Three years, 5% rate of return	Three years, 5% rate of return
Delta before Social Security (MC-FC)						
All Unionized sworn public safety employees in Montgomery County receive \$10,400 less than their non-unionized counterparts in Fairfax County. This amounts to a difference of over 20 percent in favor of Fairfax County uniformed public safety employees. Montgomery County firefighters DROP program is superior to Fairfax County in that the guaranteed rate of return is 2.5% to 3.25% higher.						
Delta after reaching Social Security (MC-FC)	Retired Mont. police receive \$25,776 less in pension benefits	Retired Mont. fire/EMT receive \$20,008 less in pension benefits	Retired Mont. DS/Cos receive \$19,132 less in pension benefits	Fairfax police post Social Security benefit is 58.43% higher	Fairfax Fire/EMT post Social Security benefit is 63.86% higher	Fairfax Deputies/ CO post Social Security benefit is 65.44% higher

Table 18. Comparison of Montgomery County and Fairfax County Public Safety Pension Payments (AFE = \$86,000; 25 years of service)

significant advantage in terms of pension benefits over similar Montgomery County public safety employees. Public safety employees in Fairfax retiring after 25 years receive

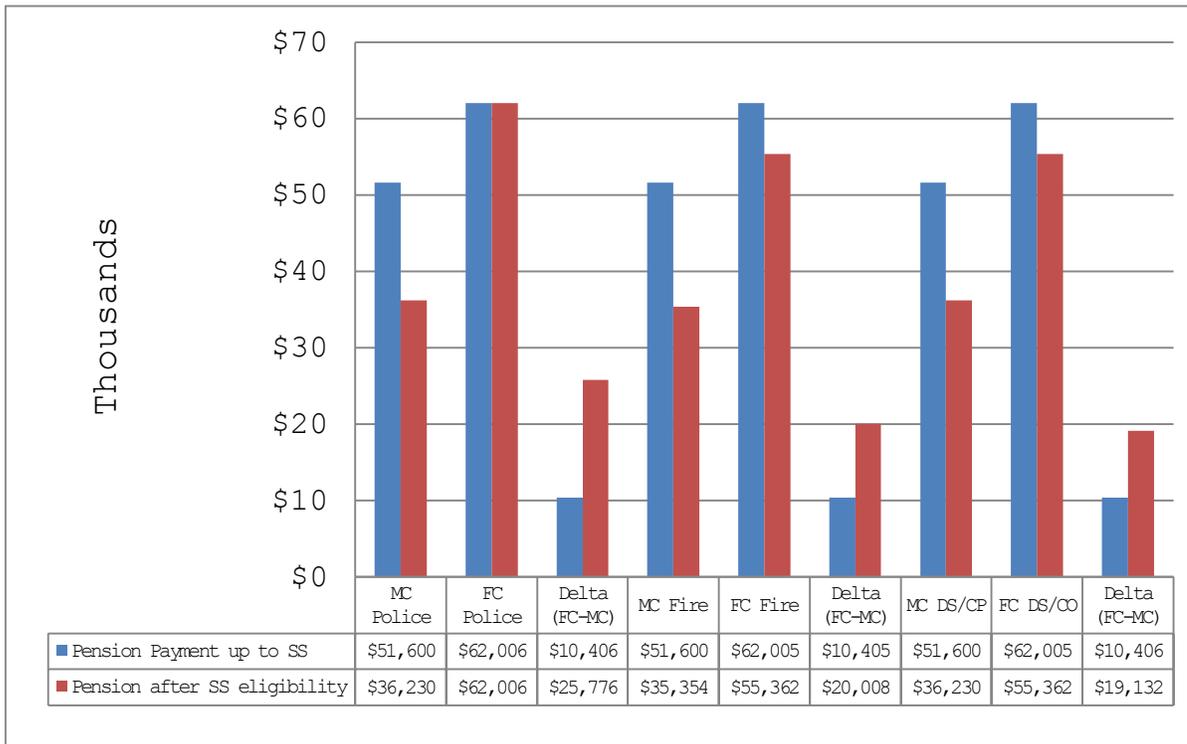


Figure 18. Comparison Pension Payments to Public Safety Employees in Montgomery and Fairfax Counties (AFE = \$86,00; Years of Service = 25)

a pension that is 20 percent higher than the payments received by Montgomery County public safety employees. Upon reaching Social Security eligibility for normal retirement, the differential jumps to over 50 percent in favor of Fairfax police officers and over 60 percent for Fairfax County firefighter's correctional officers and deputy sheriffs.⁴¹ Another substantive area where police officers in Montgomery lag behind Fairfax is in the deferred

⁴¹It should be noted that Social Security payments to Montgomery County would reduce the size of the pension pay differential.

retirement option program, commonly known by its acronym DROP. The program allows participants who are eligible for normal retirement to file their retirement paperwork but continue working for a set period of time and actually retire (stop working) at the end of the DROP period. While enrolled in DROP employees continue to receive their salaries. Their retirement payments are set aside in a special fund which may earn interest—in Fairfax County it comes to 5 percent, for Montgomery County police DROP participants it is invested by the plan participant and earns the market rate of return. Both jurisdictions have a three-year maximum period for participation in DROP. Firefighters in Montgomery County have a current guaranteed rate of return of 7.50 percent, which exceeds Fairfax's five percent. Deputy Sheriffs and correctional officers in Montgomery County do not have a DROP program.⁴²

Converting sick leave for additional service credits does not appear to give public safety employees in either jurisdiction an advantage. Fairfax County's accrual rate is slightly better for employees, than Montgomery County—172 hours converts to one month, as compared with 176 in Montgomery County. Until January 1, 2013, Fairfax County

⁴²MCGEO Local 1994 UFCW negotiated a DROP program for uniformed correctional officers and deputy sheriffs, effective July 2015. There is no guaranteed interested rate for participants.

had no upper limit on how much additional credit could be obtained by converting unused sick leave, a very significant benefit, which was reduced to a one-year cap for new entrants. Montgomery public safety employees can convert sick leave, albeit at a slightly higher accrual rate, but have a two-year cap on how much additional service credit can be obtained.

Paid Time Off: Comparing Policies on Sick Leave, Annual Leave, Holidays, and Personal Leave

In addition to economic benefits, described and analyzed above, unions also seek to enhance the ability of employees to take time off work without a loss or reduction in salary. Generally, provisions for sick leave and annual leave make up the bulk of leave provisions. The union effect in this case is manifested by the variations in leave policies between the different public safety group within Montgomery County contrasted with Fairfax County which has one policy for all employees.

Police officer leave policies

Table 19a and Figure 19a show that police officers in Montgomery County are entitled to 15 days of leave during the first three years of service, while Fairfax County police are entitled to only 13 days, an advantage of two

additional days for Montgomery County's police. The gap narrows somewhat at 3-15 years of service: 20 days of annual leave for Montgomery County and 19.5 days for Fairfax County police officers, a difference of half a day. At 15 plus years of service, both jurisdictions grant 26 days of annual leave. A more pronounced variance exists for annual leave carryover from one year to the next; Montgomery County allows officers to accumulate up to 40 days of leave during the first ten years of service while Fairfax County only allows a 30-day accumulation. After ten years of service, both jurisdictions allow 40-day accumulation and carryover. The collective bargaining agreement (CBA) for Montgomery County police officers also grants 15 days of sick leave as opposed to Fairfax County's 13 days. The one leave area in which CBA appears to lag is in holidays, Fairfax County grants 12.5 days, while Montgomery County grants nine days, giving Fairfax County officers a four and one-half day advantage. The advantage, however, narrows considerably since Montgomery County also grants four personal days for police, and Fairfax County does not have personal days. Table 19a and figure 19a compare the leave differences for police officers.

Type of Leave	Montgomery County	Fairfax County	Delta
Annual Leave	1-3 years = 15 days	1-3 years = 13 days	MC allows 2 additional days
	3+15 years = 20 days	3+15 years = 19.5 days	MC allows additional .5 day
	15+ years = 26 days	15+ years = 26 days.	No difference
	Can accumulate 40 days over accrual rate	Can accumulate 30 days over accrual rate for 1-10 years, 40 days thereafter	MC police can accumulate 10 additional days during the first ten years on duty
Sick Leave	15 days per year	13 days per year	MC police are granted 2 additional days
Paid Holidays	8 days per year	12.5 days per year	MC police are granted 4.5 fewer paid holidays
Other Leave Provisions	Three personal days per year	No personal days	MC police are granted 3 leave days

Table 19a. Comparison of Leave Policies for Police Officers in Montgomery and Fairfax Counties

Firefighter and EMT leave policies.

Leave policies for firefighter and EMS personnel are more complex due to the 24-hour workday schedule. Fairfax County firefighters work 2912 hours, while Montgomery County's maximum for firefighters on shift work comes to

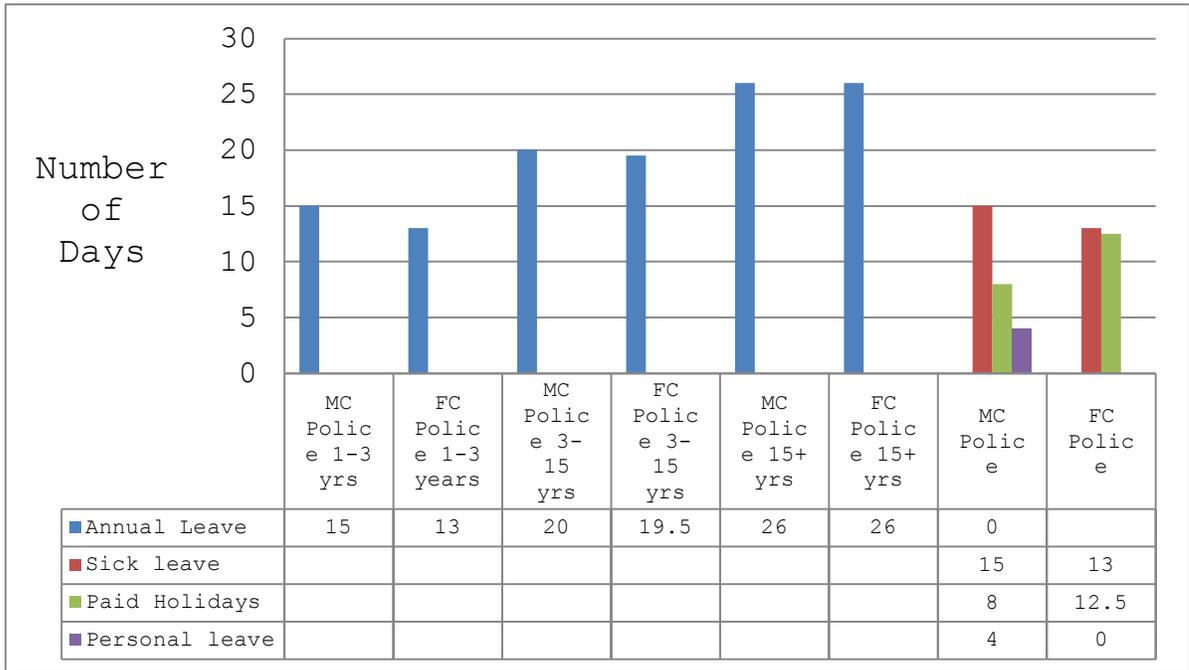


Figure 19a. Comparison Chart of Leave Policies of Police Officers in Montgomery and Fairfax Counties

2496 hours. The comparison utilizes these two work years in order to minimize any errors. Local 1664 IAFF's CBA allows for a range of 4.5-5.25 additional annual leave days (a full leave day is 24 hours), and 5 additional sick leave days. Fairfax County firefighters can accumulate four more leave days to carry over, and also have four and one-half additional holidays. The latter advantage is more than offset, however, by the maximum of six days of personal leave granted by the collective bargaining agreement. Table

Type of Leave	Montgomery County	Fairfax County	Delta
Annual leave	1-3 years = 15/15.75/18 days ⁴³	1-3 years = 13 days	Montgomery grants 5 additional days ⁴⁴
	3+ -15 years = 20/21/ 24/days ⁴⁵	3+ -15 years = 19.5 days	Montgomery grants 4.5 additional days
	15+ years = 26/27.37/31.25 days ⁴⁶	15+ years = 26 days	MC grants 5.25 additional days
	Maximum accumulation = 30/31.5/36 days ⁴⁷	Maximum accumulation = 30 days for 1 -10 years of service, 40 days thereafter	Montgomery accumulates 4 fewer days of annual leave
Sick Leave	15 to 18 days depending upon the number of hours worked per year	13 days per year	MC has up to 5 additional sick leave days
Paid Holidays	8 days per year	12.5 days per year	Montgomery grants 4.5 fewer paid holidays
Other Leave Provisions	Personal Leave of 3/4/6 days per year	No personal leave days	Montgomery grants up to 6 days more

Table 19b. Comparison of Leave Policies of Firefighters in Montgomery and Fairfax Counties (2013)

19b and figure 19b highlight the leave policies of both jurisdictions.

Deputy Sheriff and Correctional Officer leave policies

MCGEO Local 1994 UFCW represents both correctional officers and deputy sheriffs. Its collective bargaining

⁴³Based on the following number of hours worked per year: 2080 / 2184/ 2496.

⁴⁴This comparison utilizes the annual leave days granted for 2496 hours worked per year in both jurisdictions.

⁴⁵Ibid.

⁴⁶Ibid.

⁴⁷Ibid

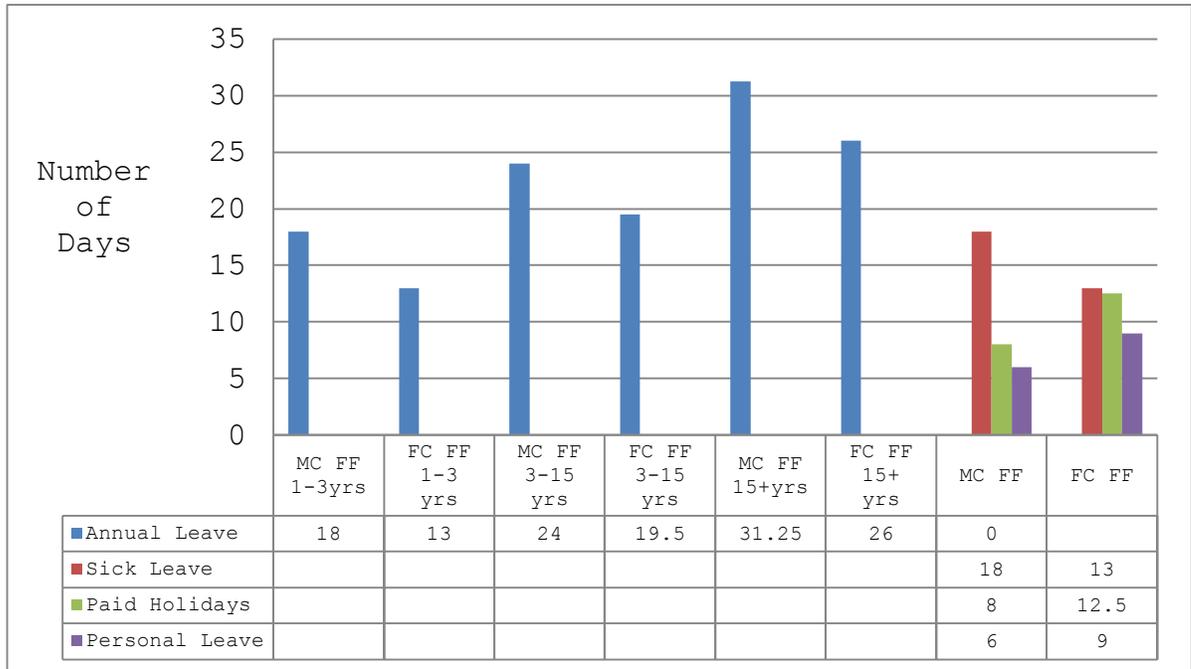


Figure 19b. Comparison Chart of Leave Policies of Firefighters in Montgomery and Fairfax Counties

agreement in terms of leave policies is similar to other Montgomery County employees and is highlighted in table 19c and figure 19c. For annual leave, the union CBA entitles employees 15 days of leave for the first three years of service, 20 days during 3-15 years of service and 26 days thereafter. Fairfax County grants 13 days for the first three years, followed by 19.5 for 3-15 years, and 26 days for service after 15 years. Sick leave allowance is the same as well, 15 days for Montgomery County and 13 days for Fairfax County. Leave accumulation in Montgomery County is limited to 30 days, while Fairfax County allows 40 days

Type of Leave	Montgomery County	Fairfax County	Delta
Annual Leave	1-3 years = 15 days	1-3 years = 13 days	Montgomery grants 2 additional days
	3+ -15 years = 20 days	3+ -15 years = 19.5 days	Montgomery grants 0.5 additional day
	15+ years = 26 days	15+ years = 26 days	No difference
	Maximum accumulation is 30 days	Accumulate 30 days for 1-10 years. 40 days after 10 years of service.	No difference for first ten years of service. Montgomery grants 10 fewer days after 10 years of service
Sick Leave	15 days per year	13 days per year	Montgomery grants 2 additional days
Paid Holidays	8 days per year	12.5 days per year	Montgomery grants 4.5 fewer paid holidays
Other Leave Provisions	3 days personal leave per year	None	Montgomery grants 3 additional days

Table 19c. Comparison of Leave Policies for Deputy Sheriffs and Correctional Officers in Montgomery and Fairfax Counties (2013)

after ten years of service. Paid holidays are also identical—nine for Montgomery County and 12.5 for Fairfax County—somewhat offset by the absence of personal leave in Fairfax County versus three days for Montgomery County deputy sheriffs and correctional officers. Table 19c and Figure 19c compare the leave policies for deputy sheriffs and correctional officers in both counties.

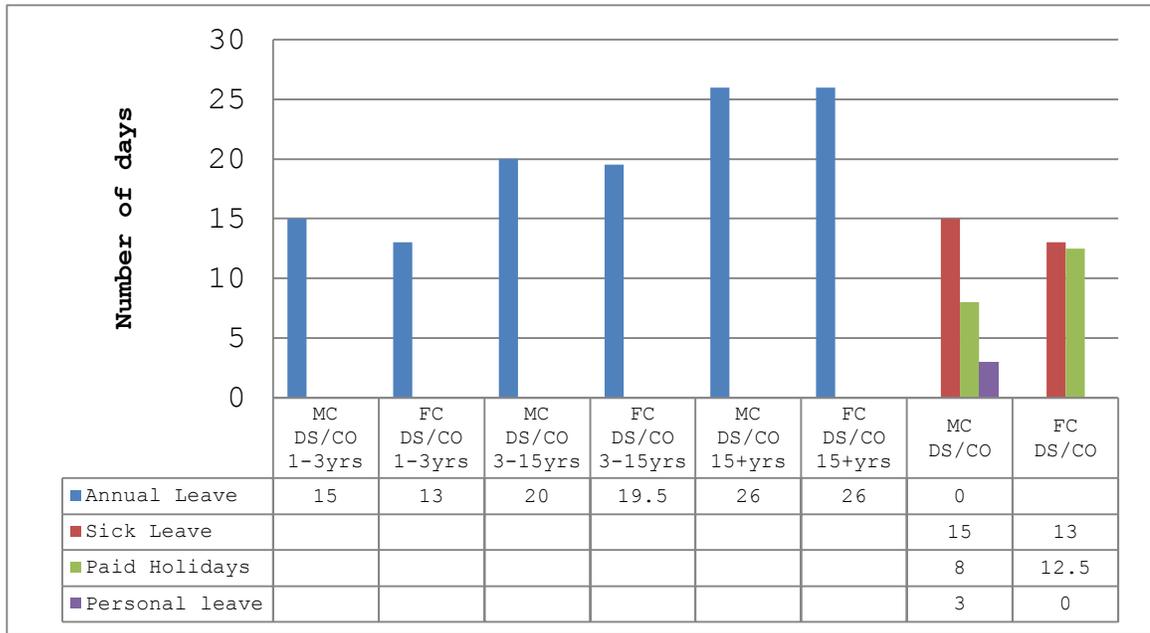


Figure 19c. Comparison Chart of Leave Policies for Deputy Sheriffs and Correctional Officers in Montgomery and Fairfax Counties (2013)

Impact of Statutory Collective Bargaining on Leave Policies

One union effect mentioned earlier is the ability of unions in Montgomery County to tweak the leave policies for their members, whereas the absence of collective bargaining in Fairfax County does not allow variations from the policy covering all employees. Is there a union effect in terms of the leave provisions? The data suggests a moderate effect. Police officers represented by FOP Lodge 35 enjoy two and one-half more days of annual leave up to 15 years of service and also benefit from two additional days of sick leave annually regardless of years of service. The CBA also entitles them to accumulate and carry over 10 additional

days of leave from the beginning of their careers, while Fairfax police officers have to wait until the completion of ten years of service. Fairfax County does grant four and one-half additional paid holidays, but this is mostly offset by the four days of personal leave granted by the FOP CBA. Montgomery County firefighter and EMS represented by the Local 1664 CBA also have more annual and sick leave days granted than their nonunion counterparts in Fairfax County. In terms of leave accumulation, the CBA lags behind Fairfax County by four days throughout their careers. The additional paid holidays granted by Fairfax are offset by the 3-6 days of personal leave provided by the CBA. For deputy sheriffs and correctional officers represented by MCGEO Local 1994, the collective bargaining agreement allows two and one-half annual leave days for the first 15 days of service and 2 additional sick leave days annually throughout their careers. Fairfax County does allow ten more carryover annual leave days after ten years of service, and the additional four and one-half paid holidays is only partially offset by the three days of personal leave granted to Montgomery County deputy sheriffs and correctional officers.

Overall Summary of the Union Effect on Salaries and Benefits for Uniformed Public Safety Personnel

An examination of the salaries, health insurance programs, paid time off and retirement systems shows a moderate relationship between the presence of statutory collective bargaining rights and economic gains attributable to collective bargaining. This conclusion is in line with other findings in the literature, (Freund 1974; Katz 1984; Horton 1988; Fogell and Lewin 1988), showing a measured relationship between public sector collective bargaining and gains in employee salaries and benefits. In terms of base wage increases the difference attributed to collective bargaining is minimal at the lower levels of the pay scale, but does become more pronounced as employees gain additional service credit or seniority. Plan designs and premiums paid for health insurance are similar in both jurisdictions, though Fairfax County public safety employees pay less of the premium cost for employee-only coverage, while Montgomery County public safety employees pay less of the premium cost for employee plus one and family coverage. In terms of holidays and days off with pay, Montgomery County employees have a marginal advantage with greater accruals for personal, sick and annual leave while Fairfax County employees have four and one-half

additional holidays off from work per year. Comparing and analyzing pension and retirement allowances for police, firefighters, deputy sheriffs and correctional officers between the two jurisdictions indicates a significant detriment for Montgomery County public safety employees. Despite the fact that pension benefits are a mandatory subject for bargaining for all four Montgomery County public safety groups, they receive substantially less retirement allowance, tens of thousands of dollars annually in some cases, than a similarly situated public safety employee in Fairfax County.

CHAPTER 5

Public Sector Unions and Political Campaign Contributions⁴⁸

Prior to the enactment of collective bargaining statutes, the most effective weapon employed by public sector unions and associations to advocate for their members consisted of lobbying and involvement in the political process. The scope of activities encompassed by this approach ranged from meeting with top-level executive leaders for a jurisdiction, organizing grass roots campaigns, endorsing candidates for public office, and investing in labor union friendly candidates by donating money or in-kind resources. It should not be surprising that public sector unions in jurisdictions without the right to bargain would continue to utilize this method. Conventional wisdom would argue, on the other hand, that public sector union political activity would decline once unions won the legal right to collectively bargain. This chapter focuses on the political campaign contributions made by employee associations and unions in Montgomery and Fairfax counties, to determine if unions in a collective

⁴⁸As part of the research and analysis, the findings include listing the recipients of political contributions made by unions and employee organizations in both Fairfax and Montgomery counties. The names are a matter of public record, retrieved from the required filings made by the unions' political action committees to the respective state elections offices.

bargaining jurisdiction continue to utilize the political process and, if so, whether the combination of statutory collective bargaining and involvement in the political process always result in public policy outcomes favorable to unions.

Data on political campaign donations is derived from the following sources: National Institute on Money in State Politics, Follow the Money; the U.S. Department of Labor, Office of Labor Management Standards LM-2Reports; the Virginia Public Access Project (VPAP); and the Maryland State Board of Elections, Campaign Finance Database. All analyses and statistics are the author's based on the data derived from these sources.

Public Safety Union Political Contributions in Virginia and Maryland

Virginia Political Contributions

For the period 2001-2012 special interests donated nearly \$519 million to candidates for statewide offices in Virginia (NIMSP 2011, under Industry Influence). This amount was almost evenly divided between the major parties, with \$261.3 million (50.3 percent) given to Democratic Party candidates and \$250.7 million (48.3 percent) given to Republican Party candidates. The remainder, nearly seven

million dollars (1.4 percent), was given to third parties or ballot measures. Table 20a and figure 20 illustrate the special interest and union political contributions in Virginia. Contributions from public and private sector unions came to slightly over \$15 million. If the calculation omits private sector and federal unions, the amount spent by public sector unions during the same time period comes to nearly eight million dollars or less than one and one-half (1.48) percent of the total monies spent by special interest groups. Unlike the nearly even division of contributions between Republican and Democratic parties by all special interest groups, union contributions tilted heavily towards Democratic Party candidates at 92.86 percent as opposed to 6.86 percent for Republican candidates. Public sector union partisan contributions varied slightly from all union donations—86.70 percent for Democrats and 12.75 percent for Republicans (calculated from data reported by the National Institute). Based on Virginia's 2010 population of eight million residents (US Census Bureau 2011), the statewide per capita expenditure of all special interests comes to \$64.87, for all labor unions it comes to \$1.90, and for public sector unions the amount comes to \$0.96.

	Total Contributions	Democrats	Percent	Republicans	Percent
All candidates and committees by interest groups	\$518,999,106	\$261,312,144	50.35	\$250,721,651	48.35
All candidates and committees by all labor unions	\$15,208,298 (2.93% of total expenditures)	\$14,123,327	92.86	\$1,034,400	6.80
All candidates and committees by public sector unions	\$7,724,160 (1.5% of the total amount and 50.8% of all union contributions)	\$6,697,612	86.71	\$985,525	12.76

Table 20a. Summary of Contributions for Statewide Offices in Virginia, 2001-2012

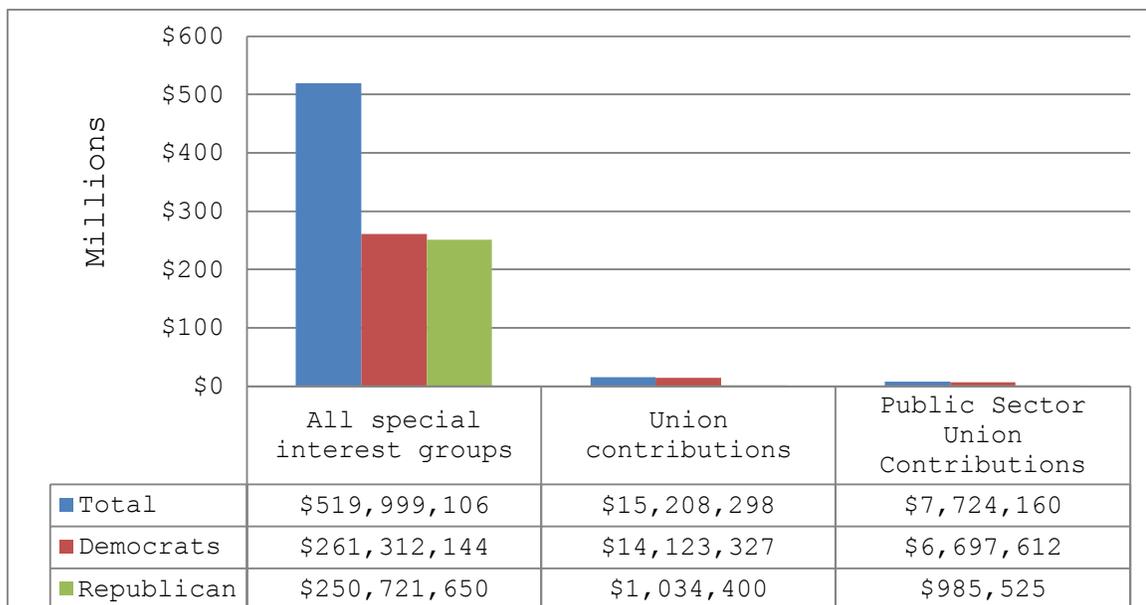


Figure 20a. Special Interest Contributions to Statewide Offices in Virginia, 2001-20

Maryland Political Contributions

Special interest contributions in Maryland for state offices during the period 2002-2012 came to nearly \$329 million, with \$140 million (42.45 percent) donated to Democratic Party candidates and \$74 million (22.45 percent) donated to Republican Party candidates (NIMSP 2011). Table 20b and figure 20b highlight the money spent in Maryland political races from 2002-2012. The remaining \$115 million or 35 percent went to third-party and independent candidates with the vast majority, \$107 million, donated in the 2012 election cycle towards three ballot measures, all of them enacted by Maryland voters: nearly \$2 million expended in support of the Maryland DREAM Act, \$10 million expended upholding Marriage Equality legislation, and nearly \$95 million was spent by the proponents and opponents of expanding casino gambling in Maryland (National Institute). Labor unions' portion of the monies donated to the ballot measures came to \$2.5 million, or 2.3 percent of the total amount spent by all interest groups. Removing the donations made towards ballot measures in 2012 from the above calculations, in terms of the political partisan divide, shows that slightly more than half of the funds (58.81 percent) went to Democrats and approximately

	Total Contributions	Democrats	Percent	Republicans	Percent
All candidates and committees by interest groups	\$328,920,242	\$135,657,395	42.45	\$73,853,105	22.45
All candidates and committees by all labor unions	\$14,558,592 (4.42% of above total)	\$11,146,760	76.50	\$262,327	1.80
All candidates and committees by public sector unions	\$7,427,807 (2.25% of above total)	\$4,332,204	58.32% including ballot question 86.2% excluding ballot questions	\$167,123	2.25% including ballot questions 3.3% excluding ballot questions

Table 20b. Summary of Contributions for statewide offices in Maryland, 2002-2012

one-third (33.29 percent) went to Republicans. The total labor union donations for statewide offices during the period 2001-2012 came to \$14,558,592, which amounts to less than 5 percent. Removing the donations made for the 2012 ballot questions increases labor's ratio by nearly one percent to 5.43 percent, donating over \$11 million (76.6 percent) to Democratic party candidates and over \$262 thousand (2.2 percent) to Republican party candidates. Further refining the analysis solely to public sector unions shows that as a cohort they spent nearly \$7.5 million, or about one half of all donations made by labor

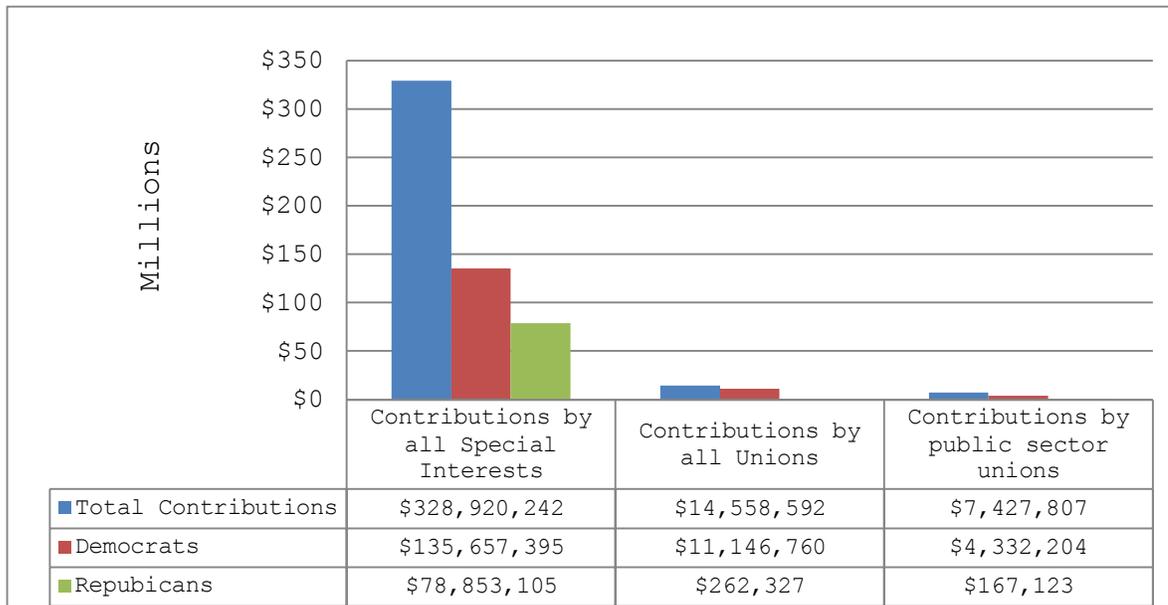


Figure 20b. Summary Chart of Contributions for Statewide Offices in Maryland, 2002-2012

unions, 60 percent (\$4,332,294) of which went to Democrats. Slightly over 2 percent (\$167,124) was given to Republicans and nearly one third (\$2,403,480) to the 2012 ballot issues. Removing the ballot issues from the analysis produces an even larger tilt towards Democrats (86.2 percent), but also a slight gain of over one percent for Republicans to encompass 3.3 percent of all public union contributions (all calculations derived from data from NIMSP 2011). Based on Maryland's 2010 population of 5.7 million residents (US Census Bureau 2010) the statewide per capita expenditure of all interest groups comes to \$57.70, for all labor unions the amount totals \$2.52 and for public sector unions \$1.28. The latter figure is slightly larger

on a per capita basis than the amount spent by Virginia public unions—\$0.96.

Public sector union contributions to political campaigns in Fairfax County

A review and analysis of public safety union contributions for local offices in Fairfax County during the years 2002-2012 suggests that it is an established method for unions to attempt to influence policy makers. One union in particular—the Fairfax County Professional Firefighters and Paramedics, IAFF Local 2068—has the reputation for being a most effective practitioner. From 2002 through 2012, Local 2068 donated nearly one million dollars to state and local political campaigns with \$881,996 (90 percent) going to Democrats, while \$79,551 (7 percent) was donated to Republicans (VPAP 2014).

Approximately 41 percent of Local 2068's contributions (\$401,468) was funneled to incumbents and candidates for the office of Fairfax County Board of Supervisors, including \$56,500 to Gerard Connelly, the previous Board Chair and now member of the United States House of Representatives. Board Chair, Sharon Bulova received \$22,500 from 2002 to 2008, while serving as a member of the Board, and an additional \$67,176 from 2009 through 2012 when elected Board Chair (Ibid.). Local 2068 also donated a

total of \$59,050 to the Fairfax County Democratic Party, and \$10,000 to the Fairfax County Republican Party (VPAP). In addition to Board Chair Sharon Bulova, all nine elected members of the Board of Supervisors (2011-2015) have received contributions from Local 2068, in amounts ranging from \$225 to \$37,300.

Democrats hold seven out of nine seats on the board of supervisors, including the chair and vice chair. No other union representing uniformed public safety employees in Fairfax County matches the political contributions made by IAFF Local 2068. One factor is their cohesiveness and unity. Nearly 1,300 Fairfax County firefighters are Local 2068 members, whereas the Deputy Sheriffs Association has less than 150 members, and police officers are divided among four competing organizations with the largest group, the Fairfax County Police Association, having 659 dues paying members.⁴⁹

Local 2068 also profits from a reputation for being politically savvy, and from its depth of commitment to endorsed candidates. A member of the board of supervisors described Local 2068's political involvement stating, "they die for you . . ." (confidential interview). At

⁴⁹As of December 2012 the other police groups are: Coalition of Police-446 members, Black Law Enforcement Officers-30 members, Fraternal Order of Police-179 members, Police Benevolent Association-152 members. Information from Susan Woodruff, email message to author, July 2, 2012.

fundraisers the union will supply logistics, food, drinks and publicity. Another influential board member stated that, "when they support you, it is big time—contributions, volunteers, signs, poll workers etc. They have a history and are well-tuned to campaigns." (confidential interview) Others observed that Local 2068's involvement extends to charity events hosted by individual supervisors by donating money, and volunteers to ensure success, "They don't just endorse, but assist all year," stated another member of the board of supervisors (confidential interview). Credit is also given to IAFF Local 2068 for maintaining a professional relationship with the Board of Supervisors by offering potential solutions when they have an issue.

Local 2068's president, John Niemec, acknowledges and reciprocates the high esteem given to Local 2068 by most Board members, "the Board is very supportive . . . [and] we do not want to fracture any relationships with Board members (Niemec, interview). He also recognizes the value of the union's endorsement by local officials, "We provide money, poll workers . . . phone banks, lawn signs and will serve beer or food at fundraisers. We are there for those who we endorse . . . We don't go in half-assed. Politics is a 24/7, 365 day [sic] a year enterprise and we practice it."

Compared to IAFF Local 2068's efforts, lobbying and supporting local political candidates by other public safety unions in Fairfax appears to be far less robust. When asked to rank the influence of unions or associations representing deputy sheriffs and police, on a one to five scale (one being minimal and five outsized influence), the former appointed Executive of Fairfax County, Anthony Griffin, ranked police influence as a two and sheriff deputies influence as one, adding that in his years of service as the Executive, (2000-2012) he did not recall one time when the union for deputies approached him (Griffin, interview 2013). His observation was independently supported by other top level officials and elected members of the of Fairfax County Board of Supervisors, some of whom stated that the sheriff's organization limited their involvement to the sheriff's and a handful of other elections.

A review of political contributions made by police and deputy sheriffs' unions, corroborates the statements made by top Fairfax County officials: from 2001 to 2011 the Fairfax Coalition of Police, Local 5000 donated a total of \$38,650 to political campaigns (VPAP 2013, under Candidates and Elections), of which \$10,750, or 27.81 percent, went to candidates for the Board of Supervisors. The remainder, nearly \$28,000, was donated to candidates for state

offices. The PAC for the Deputy Sheriff's Coalition-Local 5016 reported spending \$33,500 from 2003 to 2009, of which \$5,500 or 16.41 percent was donated to candidates for Board of Supervisor positions (Ibid.). Another method is to look at the campaign donation filings made by each of the current members of the Board of Supervisors which can identify other large contributions, and place the donations made by Fairfax public safety unions in context. Table 21 and figures 21a and b lists the itemized cash contributions submitted by each incumbent Fairfax County Supervisor to the Virginia Board of Elections for the period 2005-2013 (Ibid.).

The role played by IAFF Local 2068 in the Fairfax County Board of Supervisors election campaign contributions compared to other public sector unions is displayed in Chart 21C. Local 2068 donated nearly \$300,000 to incumbents and candidates, exceeding the combined total of all other union contributions by over \$41 thousand dollars.

Analysis of Political Activity. Table 21a and figure 21c appear to confirm the outsized role played by the Fairfax County Professional Firefighters, IAFF Local 2068 in Fairfax County local elections. Figure 20 illustrates that Local 2068 outspent other unions for the Board of

Candidate	Total cash contributions, \$100 and above	IAFF Contributions	Police Union Contributions	Deputy Sheriff Contributions	Other union Contributions
Sharon Bulova (D) 2005-2013⁵⁰	\$1,670,461	\$83,167	\$6,000	None reported	\$59,000 from SEIU \$7,750 from UFCWU \$7,941 from SEIU Local 32 \$7,212 from AFSCME \$6,500 from IBT \$5,000 from Fairfax Public Employees PAC (SEIU)
John Cook (R) 2008-2013⁵¹	\$331,663	\$1,000	None reported	None reported	\$4,000 from SEIU
John Foust (D) 2008-2013	\$232,255	\$19,000⁵²	None reported	None reported	\$3,500 from SEIU, \$500 from the Laborers Union and \$500 from United Food and Commercial Workers Union
Michael Frey (R) 2005-2013	\$240,214	\$10,500	None reported	None reported	\$1,000 from SEIU

⁵⁰Sharon Bulova's campaign expenditures are several times larger than reported by all other Board of Supervisors. This anomaly can be attributed to the method of election to the office; eight members are elected from separate districts, while the Chair, who is the ninth member, is elected countywide.

⁵¹Cook replaced Sharon Bulova (March 10, 2009 special election) when the latter decided to replace Gerald Connelly's vacated Board Chair slot. The Democrat in the race, Ilryong Moon was supported by IAFF Local 2068 and the Fairfax County Public Employees PAC (SEIU). Cook won 49.32% to Moon's 48.63%. There was an independent candidate who received 2.038%

⁵²Foust defeated incumbent Republican Supervisor Joan Dubois in 2007, who was backed by IAFF.

Candidate	Total cash contributions, \$100 and above	IAFF Contributions	Police Union Contributions	Deputy Sheriff Contributions	Other union Contributions
Penelope Gross (D) 2005-2013	\$342,405	\$24,500	None reported	\$1,000	\$1,000 from SEIU
Penelope Gross (D) 2005-2013	\$342,405	\$24,500	None reported	\$1,000	\$1,000 from SEIU
Catherine Hudgins (D) 2005-2013	\$100,992	\$14,500	None reported	None reported	\$1,000 from SEIU. \$1,000 from Progressive Firefighters of Fairfax
Patrick Herrity (R) 2007-2013	\$497,281	\$450	None reported	None reported	None reported
Gerard Hyland (D) 2005-2013	\$379,084	\$40,000 including \$5,200 from IAFF national HQ	\$1,000	\$1,000	\$2,810 from Amalgamated Transit Union Local 869 \$1,000 from SEIU
John McKay (D) 2007-2013	\$272,716	\$26,000	\$3,000	None reported	\$1,250 from SEIU
Linda Smyth (D) 2008-2013	\$230,120	\$9,500 including \$2,500 from Fairfax city IAFF local	None reported	None reported	None reported
Joan DuBois (R) ⁵³ 2005-2007	\$133,106	\$7,500	None Reported	None Reported	None Reported
Gerald Connelly (D) ⁵⁴ 2005-2007	1,291,167	\$35,000	None reported	None reported	\$8,200 SEIU Local 32BJ \$7,500, UFCWU \$2,200 NOVA AFL-CIO \$1,000 VA. AFL-CIO

⁵³Incumbent DuBois was defeated by John Foust (D) in 2007, 53.49% to 46.33%

⁵⁴Elected to the US House of Representatives in 2009

Candidate	Total cash contributions, \$100 and above	IAFF Contributions	Police Union Contributions	Deputy Sheriff Contributions	Other union Contributions
Patrick McLanahan (D) ⁵⁵ 2007-2008	\$77,196	\$6,000	None Reported	\$3,500	\$500. From SEIU Local 32BJ
Janet Oleszek (D) ⁵⁶ 2010-2011	\$195,697	\$8,500	None Reported	None Reported	\$13,000 from LIUNA \$2,500 from UFCW \$500 from UAW
Ilryong Moon (D) 2009 ⁵⁷	\$57,604	\$4,500	None Reported	None Reported	\$5,000 from Fairfax County Employees PAC (SEIU) \$3,000 from UFCWU
Total	\$5,918,725	\$290,117	\$10,500	\$5,500	\$152,867 including \$89,162 from all SEIU sources \$18,500 UFCWU \$13,500 LIUNA \$40,873 other unions

Table 21. Campaign Contributions Given to Candidates and Incumbents for Fairfax County Board of Supervisors Elections, 2005-2013

Supervisor offices during 2005-2013. In this regard, Local 2068 reflects the historical emphasis placed on political

⁵⁵McClanahan ran and lost against Patrick Herrity for an open seat in 2007. 41.19% v. 58.74%

⁵⁶Oleszek challenged and lost to Cook for Board of Supervisors in 2011. 47.76% v. 49.22%

⁵⁷ Moon was the Democratic candidate for Sharon Bulova's vacated seat. See Fn.30

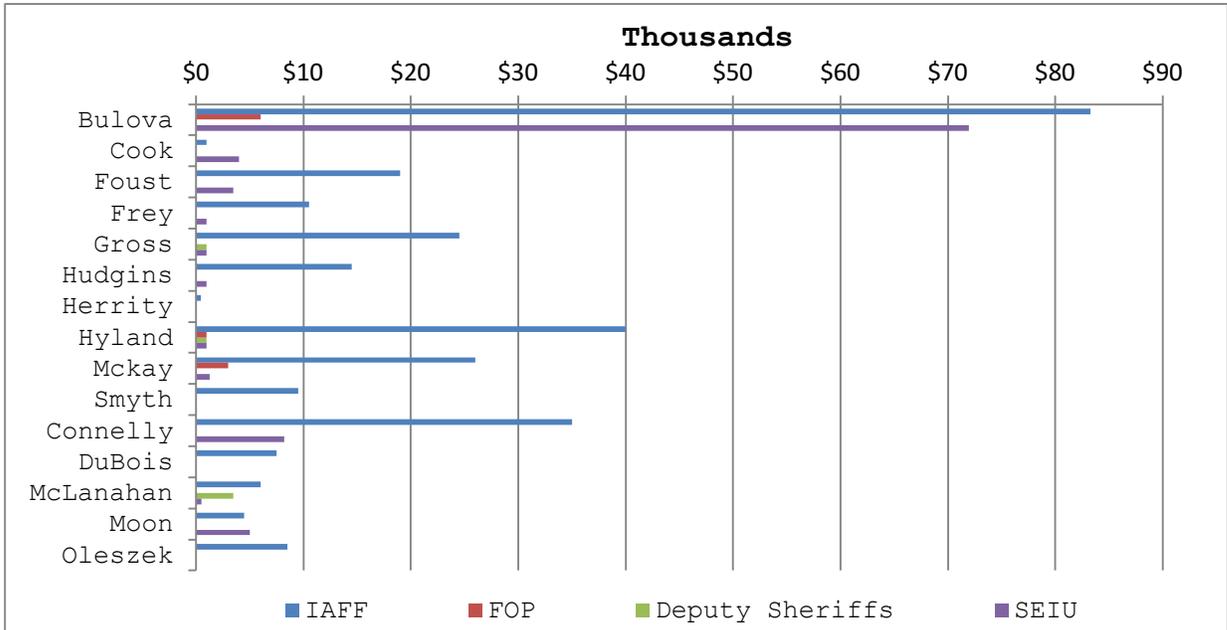


Figure 21a. Campaign Contributions Given to Candidates and Incumbents for Fairfax County Board of Supervisors Elections by IAFF and other public sector unions, 2005-2013

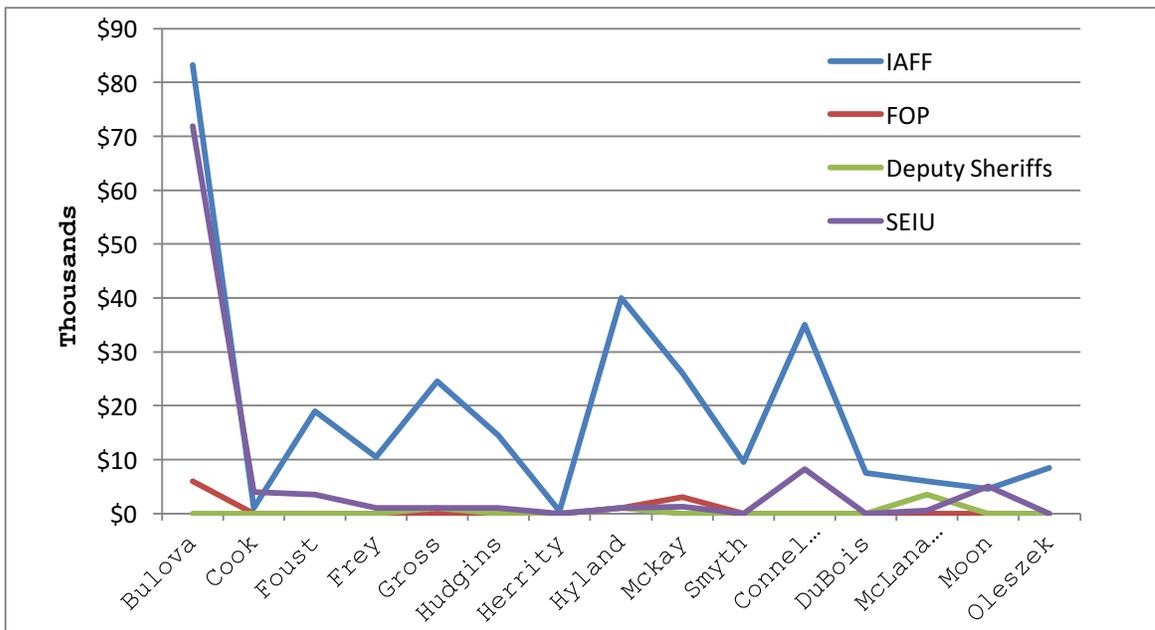


Figure 21b. Campaign Contributions Given to Candidates and Incumbents for Fairfax County Board of Supervisors, 2005-2013 (linear comparison)

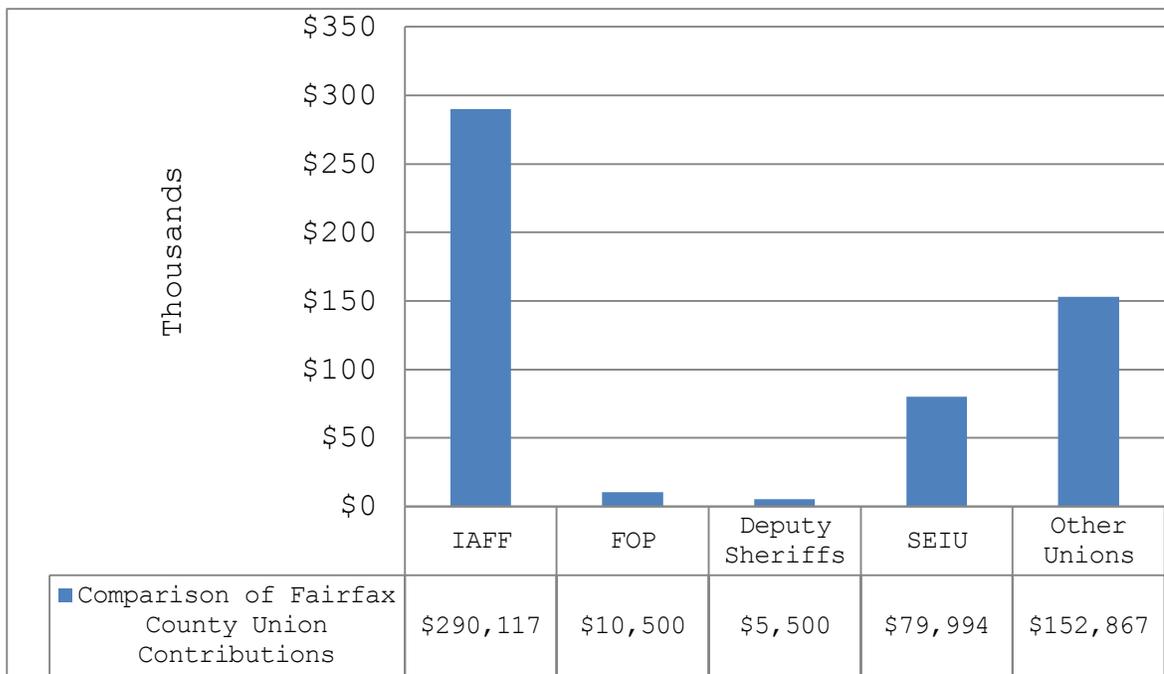


Figure 21c. Comparison of Fairfax County Union Contributions, 2005-2013

action and lobbying by the international IAFF leadership. In the last four elections involving candidates for U.S. House of Representatives and U.S. Senate (2008-2014), IAFF international headquarters spent over \$8 million of the reported \$59 million spent by all unions for these offices (US Department of Labor 2005b-2013b). While the IAFF's share for these political expenditures was slightly under 14 percent, it topped all other unions in 2006 and 2008, and ranked third in 2012 and 2014.

Data shows that the IAFF spends more money nationally on political activity and lobbying than on union organizing. In terms of total expenditures for political

activities and lobbying in general, the IAFF headquarters spent \$64,284,606 from 2005 to 2013 (Ibid.) which amounted to 24.25 percent of the total amount expended by all unions (derived from US DOL 2005b-2013b). By contrast, during the same time period, the IAFF spent \$39,220,677 or 14.79 percent, on organizing activities. Another way of viewing the priority IAFF places on political activity is to compare these expenses to other unions, and to look at the per capita expenditures for political campaigns versus organizing activities. The most obvious comparator would be a police union, but, as discussed elsewhere, police unions eschew the centralized AFL-CIO model and, for the most part follow a loose confederation structure. Instead, two large national unions were selected to conduct the comparison, the Service Employees International Union (SEIU) and the American Federation of State and County Employees (AFSCME). Both are active in the public employee space and have public safety employees as part of their membership base. Both are also known to use lobbying and political campaigns to seek and protect gains for their members. From 2005-2013 SEIU spent close to \$408 million or 22.43 percent of its total disbursements on political campaigns and lobbying, and over \$880 million or 48.46 percent on organizing (US DOL LM2). In terms of per capita expenditures, SEIU spent

\$218.46 per recorded member on political activities and more than twice as much (\$472.88) on organizing. During the same time period, AFSCME spent nearly \$350 million or 23.86 percent of its disbursements on political action and over \$435 million, or 29.74 percent on organizing activities (US DOL LM2). In terms of per capita expenditures, AFSCME spent \$243.24 on political action and \$315.62 on organizing. Both SEIU and AFSCME spent more money on organizing than on political action. IAFF on the other hand spent nearly 25 percent (\$217.96) per member, of its outgoing expenses on political activity but only 15 percent (\$132.98) per member, on organizing. Of particular interest is the statistic that as a percentage of total disbursements, IAFF spent more on political activity than the far larger and wealthier AFSCME and SEIU. Figure 21d highlights the expenditure variances among the three unions.

In addition to donating money and in kind assistance, IAFF headquarters also operates a political action division which encourages active union members to seek elected office, and sponsors a one-week intensive immersion type political training academy. The latter offers seminars on developing an effective campaign plan; targeting voters; recruiting volunteers; mastering polling, fundraising

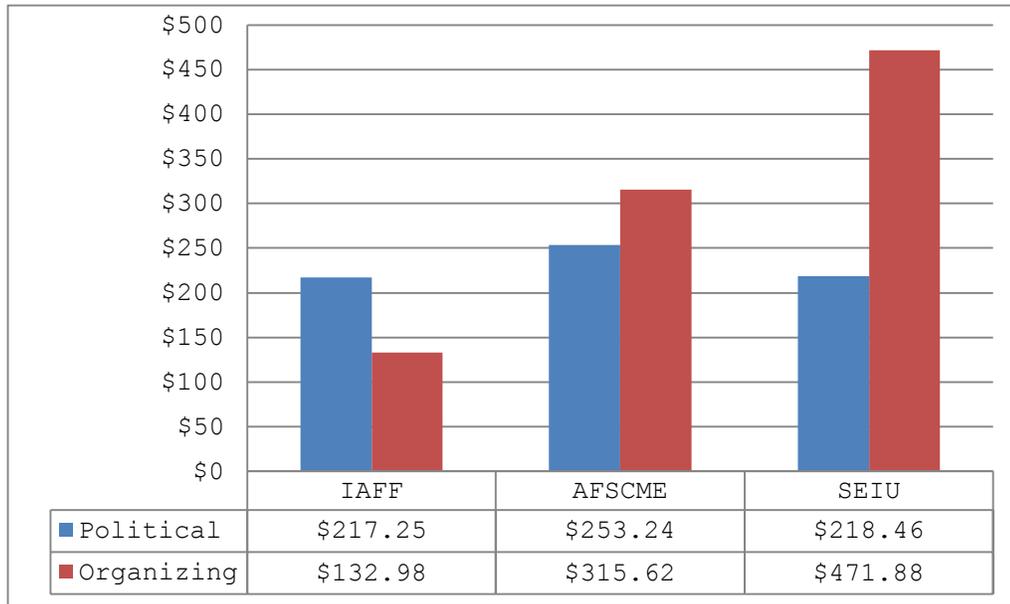


Figure 21d. Per Capita Expenditures for Political Activity and Organizing, 2005-2013

and budgeting; developing an effective message; working with the press; getting out the vote; and complying with campaign finance laws (IAFF 2014).

Public sector union contributions to political campaigns in Montgomery County

The data above suggests that public safety unions in Fairfax County substitute robust political activity (with varying degrees of success) for their lack of statutory collective bargaining, similar to the finding made by Katz’s study of unions in San Francisco (1984) and the partial finding made by Horton in New York City (1988). Does the presence of collective bargaining eliminate the need for political contributions? The data exhibited in Chart 20B above suggests that it does not since public

sector unions spent close to 7.5 million dollars in Maryland from 2002-2012. The next section of this chapter examines and analyzes the political contributions made by the three unions representing Montgomery County public safety employees.

Table 22 displays the political action committee (PAC) donations reported by each of the unions with uniformed public safety members in Montgomery County for local and statewide races from 2005-2013 (Maryland State Board of Elections 2005a-2013c).

The three unions spent over one million dollars for county and state office races; \$239,253 was spent on Montgomery County races and the remaining \$820,317 went to candidates for state office or to influence ballot issues. Of note is the similarity between the expenditures made by the IAFF and FOP in both jurisdictions—Montgomery County Lodge 35 FOP spent just over \$37,000 for County Council races, the lowest amount of the three unions, a number similar to the contributions made by the FOP in Fairfax County. Conversely, the IAFF local in Montgomery County spent nearly one hundred thousand dollars for county council races, despite a smaller membership than the FOP. Figure 22 compares the total PAC expenditures made by the three unions.

	IAFF Local 1664		FOP Lodge 35		MCGEO Local 1994, UFCWU		
Year	County races	Other MD races	County races	Other MD races	County races	Other MD races	Total
2005	\$4,500	\$24,324	\$2,500	\$2,700	\$5,500	\$37,940	\$64,694
2006	\$45,503	\$96,071	\$8,500	\$12,500	\$43,350	\$141,675	\$250,246
2007	\$300	\$33,476	0	0	\$2,500	\$28,000	\$61,476
2008	\$7,500	\$27,350	\$1,500	\$2,800	\$7,900	\$27,260	57,410
2009	\$1,000	\$26,875	\$5,000	\$6,500	\$14,000	\$58,445	\$91,820
2010	\$28,400	\$159,499 ⁵⁸	\$18,500	\$23,250	\$26,700	\$90,105	\$272,854
2011	\$2,000	\$15,450	0	\$2,500	\$700	\$26,900	\$44,850
2012	\$3,000	\$19,250	0	\$40,000 ⁵⁹	\$400	\$33,190	\$92,105
2013	\$7,000	\$26,650	\$1,150	\$11,950	\$4,750	\$85,000	\$136,500
Total	\$96,253	\$428,945	\$37,150	\$102,200	\$105,850	\$528,425	\$1,059,570

Table 22. PAC Contributions Made by Montgomery County Public Sector Unions, 2005-2013 (Derived from the Maryland State Board of Elections, Campaign Finance Reports)

⁵⁸Includes \$44,906 spent on Montgomery County Ballot question instituting a county-wide ambulance transport fee.

⁵⁹Spent on ballot issue opposing the repeal of police effects collective bargaining.

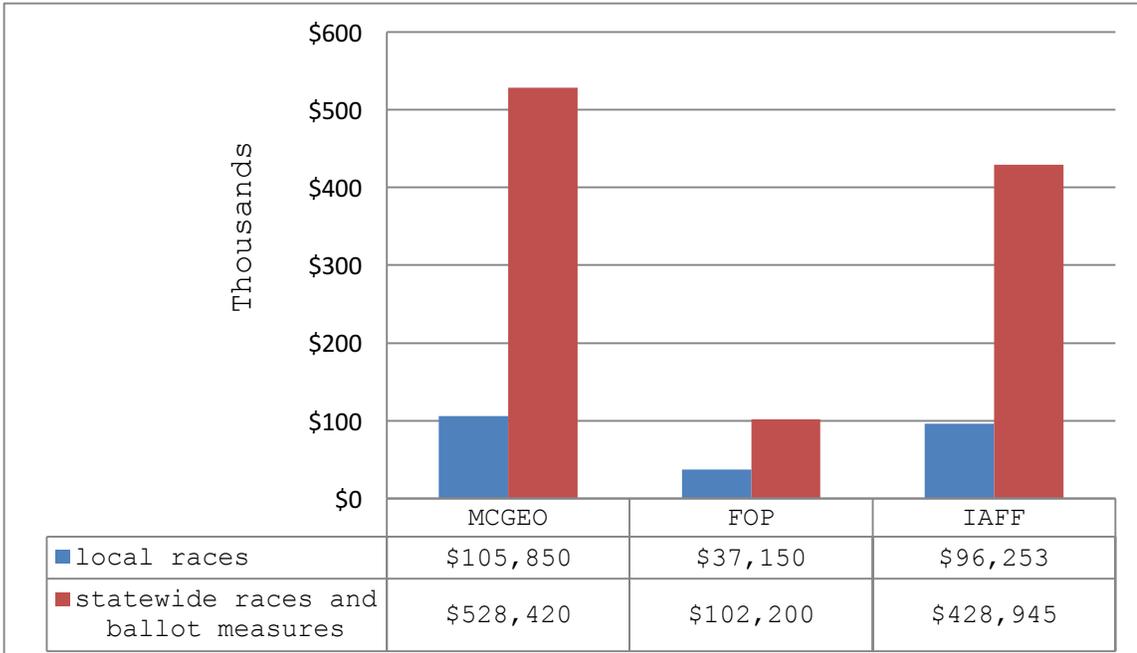


Figure 22. Comparison of the Total PAC Contributions Made by Montgomery County's Unions, 2005-2013

Table 23 and figures 23a and b detail the campaign contributions made to incumbents and candidates by IAFF, FOP and MCGEO from 2015-2013 for county council elections. The three unions donated just over two hundred thousand dollars in several county council races, and the ratio of PAC donations remained similar: MCGEO spent 41 percent, IAFF is a close second with nearly 40 percent, and FOP spent less than 20 percent of the total.

Council Member	MCGEO Local 1994	FOP Lodge 35	IAFF Local 1664	Total
Phil Andrews ⁶⁰ (D) <small>district</small> (1998)	0	0	0	0
Roger Berliner (D) <small>district</small> (2006)	0	0	0	0
Cherri Branson ⁶¹ (D) <small>district</small> (2013)	0	0	0	0
Marc Elrich (D) <small>at large</small> (2006)	\$11,000	\$4,500	\$12,000	\$27,000
Nancy Floreen (D) <small>at large</small> (2002)	\$4,500	\$4,500	0	\$9,000
Craig Rice (D) <small>at large</small> (2010)	\$5,750	\$4,000	\$6,000	\$15,750
George Leventhal (D) <small>at large</small> (2002)	\$10,100	\$7,000	\$12,350	\$29,450
Nancy Navarro (D) <small>district</small> (2009)	\$1,000	\$5,000	\$6,000	\$12,000
Hans Riemer (D) <small>at large</small> (2010)	\$6,000	\$4,000	\$8,000	\$18,000

⁶⁰Councilmember Andrews, first elected in 1998, ran for County Executive in 2014, and lost to incumbent Isiah Leggett.

⁶¹Councilmember Branson was appointed in 2013 to fill the last year of Councilmember Ervin's term. She pledged not to run for election for the term beginning in December 2014.

Council Member	MCGEO Local 1994	FOP Lodge 35	IAFF Local 1664	Total
FORMER MEMBERS OR CANDIDATES				
Howard Denis (R) district (2000-2006)	\$4,500	\$4,500	\$3,500	\$12,500
Valerie Ervin ⁶² (D) district (2006-2013)	\$9,000	\$500	\$6,900	\$16,900
Mike Knapp (D) district (2002-2010)	\$9,000	\$500	\$2,853	\$12,353
Tom Perez (D) district (2002-2006)	\$2,000	0	\$3,000	\$5,000
Mike Subin (D) at large (1996-2006)	\$6,000	0	\$6,000	\$12,000
Duchy Trachtenberg ⁶³ (D) at large (2006-2010)	\$9,000	\$500	\$6,000	\$15,500
Tom Hucker ⁶⁴ (D) district (2013)	\$4,500	\$1,150	\$1,000	\$6,650

⁶²Councilmember Ervin resigned in December 2013 to take a position with the Center for Working Families as its Executive Director.

⁶³Councilmember Trachtenberg served one term and failed to secure one of the top four at large Council positions in the 2010 Democratic primary. In 2013 she unsuccessfully challenged incumbent Roger Berliner in the Democratic primary to represent Potomac in the County Council.

⁶⁴Hucker, a member of the MD, House of Delegates, won the primary for the open Council seat vacated by Ervin.

Council Member	MCGEO Local 1994	FOP Lodge 35	IAFF Local 1664	Total
Becky Wagner ⁶⁵ (D)	0	0	\$6,000	\$6,000
Total contributions for County Council candidates and incumbents	\$82,350 41.16%	\$36,152 18.07%	\$79,603 39.80%	\$200,105

Table 23. Campaign Contributions to County Council by Montgomery County Unions with Public Safety Members, 2005-2013

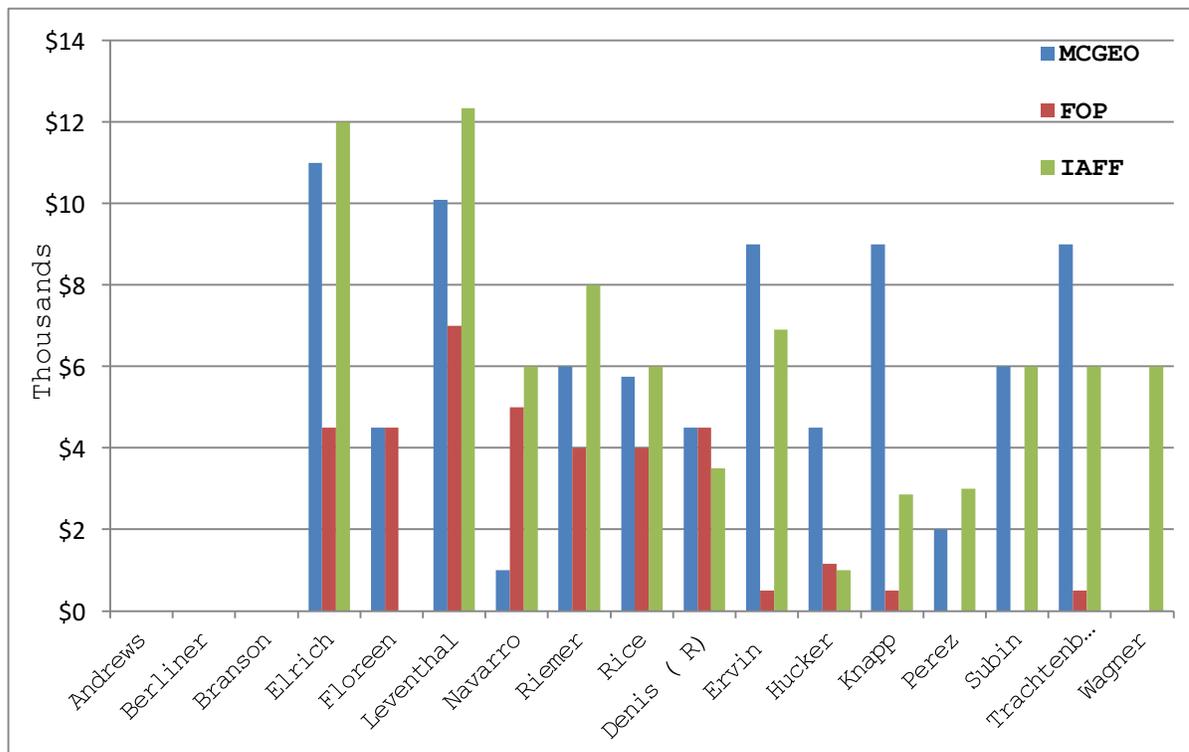


Figure 23a. Campaign Contributions to County Council by Montgomery County Unions with Public Safety Members, 2005-2013

⁶⁵ Wagner ran unsuccessfully for one of the four at large seats in 2006.

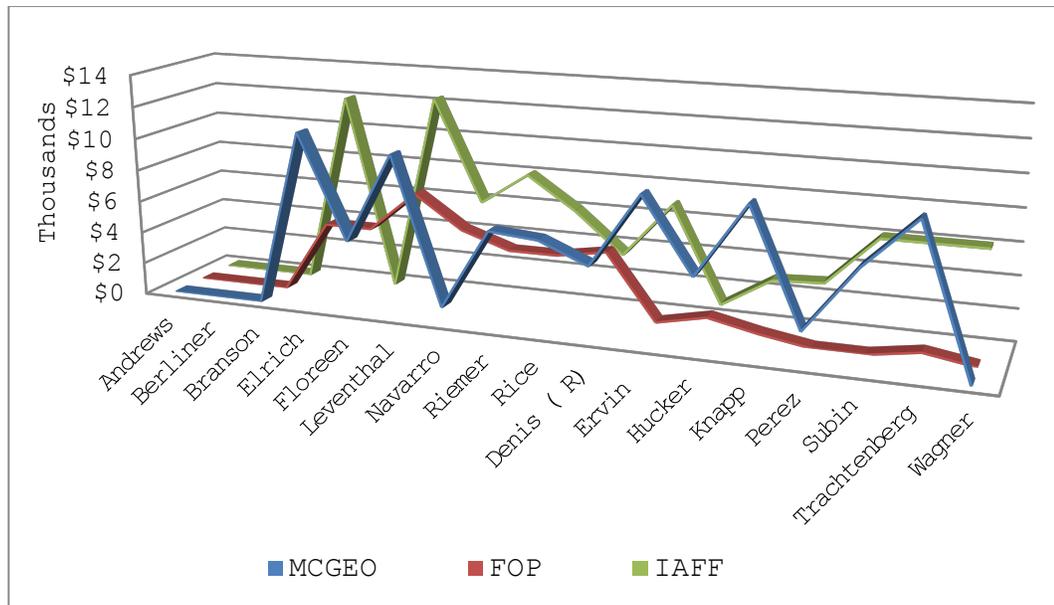


Figure 23b. Campaign Contributions to County Council by Montgomery County Unions with Public Safety Members, 2005-2013 (linear comparison)

Analysis of Political Activity. Table 24 and figure 24 show a side by side comparison of political contributions made by public safety unions and organizations in Montgomery and Fairfax Counties for 2005-2013. The data suggests that the presence of collective bargaining laws can reduce, but not eliminate, the practice of making contributions to local legislative races. Is the reduced amount due to collective bargaining or other factors? The Commonwealth of Virginia does not impose a limit on individual, corporate or union donations (Virginia Board of Elections, Summary of Laws and Policies, Section 3.1, October 2014). Maryland, on the other

hand, limits individual and corporate contributions for most political races to a maximum of \$4,000 for a political office, and imposes a \$10,000 limit per individual donor in a four-year election cycle. Registered political action committees (PACs) can contribute \$6,000 to another PAC during the four-year election cycle. There are no limits on contributions for a ballot issue committee (Maryland County Election Law 2015). Thus, the lower amount spent only for local legislative offices may also be a function of election laws, not just collective bargaining laws.

	IAFF Local 1664 IAFF Local 2068	FOP Lodge 35 Fairfax Coalition of Police	MCGEO Local 1994 Deputy Sheriffs Coalition	Total
Montgomery County	\$96,253	\$37,250	\$74,548	\$239,353
Fairfax County	\$290,117	\$10,500	\$5,000 \$89,000 (SEIU)	\$394,617
State of Maryland	\$428,945	\$102,200	\$528,425	1,059,570
Commonwealth of Virginia	\$529,551	\$74,548	\$211,980 (SEIU from 2008-2013)	\$816,079
Total Maryland	\$525,198	\$111,798	\$634,275	\$1,271,271
Total Virginia	\$819,668	\$85,048	\$305,980	\$1,210,696

Table 24. Comparison of union political expenditures in Fairfax and Montgomery Counties, 2005-2013

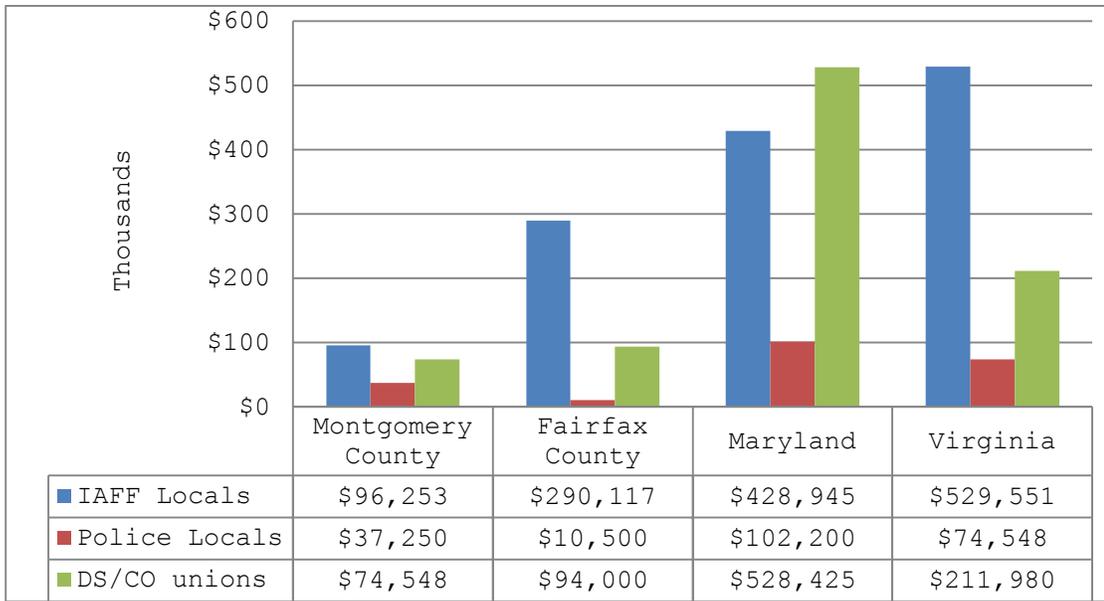


Figure 24. Comparison of union political expenditures in Fairfax and Montgomery Counties, 2005-2013

Campaign filings reported by Montgomery County police and fire unions indicate that they spent \$531,145 (Maryland State Board of Elections 2005a-2013c) for state and local political races and attempts to influence local ballot questions, while Fairfax police and fire unions spent \$604,099, (VPAP 2013) for a difference of \$72,954 or 12.08 percent. The amount spent by individual public safety unions for local races varies significantly. Montgomery County Local 1664, IAFF spent nearly \$100,000 on County Council races, while IAFF Local 2068 in Fairfax spent almost \$300,000. Montgomery County's police union on the other hand spent more than three and half times as much as the police organizations in Fairfax (\$37,250 and \$10,500 respectively). The union representing deputy sheriffs and

correctional officers in Montgomery County UFCW Local 1994, MCGEO outspent the Fairfax County Deputy Sheriffs association nearly 20 times. This conclusion is only partially valid since MCGEO also represents several thousand non-public safety employees in Montgomery County. A more valid comparison, therefore, is to compare MCGEO political contributions to donations made by SEIU, since the latter has affiliated the Fairfax County Deputy Sheriffs union and also seeks to represent other employees in Fairfax County. In that instance MCGEO still outspent SEIU \$105,850 to \$89,162, or by 18.71 percent. Montgomery County IAFF Local 1964 with a membership of 1,100 active employees spent nearly as much as Local 1994 MCGEO with a membership of 6,000+ employees, in both the Montgomery County local races as well as for statewide elections, supporting the argument made earlier that the IAFF utilizes political action as a vehicle for membership gains nationally.

**Lobbying and Political Action vs. Collective Bargaining:
Impact on Policy Outcomes in Fairfax and Montgomery
Counties**

Union contributions to political campaigns, as discussed above, make them relevant and important players in the political and policymaking process. Does, then, the

presence of statutory collective bargain rights coupled with the ability to utilize political donations lead to the condition theorized by Wellington and Winter that unions would crowd out the broader public interest in favor of narrower concerns? Or the concern expressed by McGinnis and Schazzenbach (2010, 7-8) that, "public employee unions . . . possess war chests from which they can contribute to politicians who support their goals . . . [which] gives them uniquely powerful and damaging leverage in the political process." Analysis of legislative actions affecting public safety employees in the two jurisdictions under study suggests that despite political activity—even in jurisdictions where the legal environment is favorable to unions, such as Montgomery County—a positive outcome for unions is far from assured. Conversely, the absence of legal collective bargaining doesn't necessarily lead to lack of power to represent members. Vigorous political activity can be utilized successfully as a strategy and tactic to protect employee benefits and working conditions. This section will delve into selected policy initiatives of both Montgomery County Government and Fairfax County Government, which were strongly opposed by their public safety unions and associations. The outcomes were

counterintuitive, resulting in employee gains in Fairfax County and employee losses in Montgomery County.

Public Safety Pension and Salary Structure Reform Proposals in Fairfax County

Chapter 4 outlines the elements of the various Fairfax County retirement plans for public safety personnel. Police officers belong to the Police Officers Retirement System, while firefighters, deputy sheriffs and correctional officers belong to the Uniformed Retirement System. Fairfax County police officers pay 10 percent of their salary into the plan—but are not part of, and do not pay into, the Social Security program—and have a pension multiplier of 2.8 percent. Firefighters and deputy sheriffs pay 7.08 percent of their salaries but are covered by Social Security with a corresponding lower multiplier of 2.5 percent. Both plans are defined benefit plans, and allow full retirement after 25 years based on the average final earning of the top three years. Once the salary and years of service calculations are completed, both plans add an additional 3 percent to the total pension amount. Members of the Uniformed Retirement System also receive nearly an extra 12 percent to their pension payment until they reach eligibility for Social Security, after which the extra payment ceases, but no other reduction is taken. Given that

on average members of this Plan retire at age 52 (Aon Hewitt 2012, 15) the extra retirement boost is a significant benefit for Fairfax County firefighters and deputies. Fairfax also offers its retirees a Deferred Retirement Optional Plan (DROP) which allows employees to jumpstart their retirement benefits but stay on as employees for three additional years. Their retirement allowance goes into a special account and at the end of the three years they separate from Fairfax County and start receiving pension payments; accumulated DROP funds are paid out in one lump sum.

Funding defined contribution pension plans can get complicated, employing mortality tables, normal contributions, expected rates of return and actuarial gains or losses. Simply put, contributions made by employees and employers are professionally invested and gains made on the investments are used, along with contributions made by employees and the employer, to pay for current and future benefits. Actuarial valuations are made on a regular basis to determine if the contributions and the investment rate of return is sufficient to pay for the promised benefits. If not, the plan incurs an actuarial liability which may require additional payments by the plan sponsor. In 2001, the Uniformed Retirement System was showing a funded ratio

of over 100 percent (Fairfax County Government 2002b, 42) and for Police it stood at 99 percent (Fairfax County Government 2002a, 39). As a result of salary gains, and significant underperformance by the assets under investment attributable to the recession, the funded ratio for Police fell to 83.3 percent by 2011 (Fairfax County Government 2011a, 41), and to 82.2 percent for the Uniformed Plan (Fairfax County Government 2011b, 41). The gap created by actuarial loss of plan assets required Fairfax County to appropriate \$35 million additional funds into the plans in FY 2010 and 2011. A member of the Board of Supervisors lamented that these unplanned additional appropriations, "exceeded all the combined cuts" to the County's parks and libraries made by the Board to balance the FY 2012 budget (Cook 2011). Concerned that the plans were unsustainable in the long run without adjustment, Supervisor Cook convinced the rest of the Board to conduct an outside review of the pension plans and wanted the study to, "place an extra emphasis on the defined benefits plan and the role retirement plans play in the County's overall compensation package," (Ibid.). Aon Hewitt, an international consulting firm was contracted to undertake the analysis. Sensing the possibility of losing some or all of their pension benefits by the potential shift to a defined contribution plan, the

employee groups led by Local 2068 IAFF formed an alliance, Standing Altogether for Fairfax Employees, (SAFE) to address and resist any looming changes (Niemec, interview 2014). Changing the retirement benefit structure, even on a gradual scale, would also have placed the Board of Supervisors on a collision course with the county's employees, especially with Local 2068 of the IAFF.

Aon Hewitt Consulting released its findings in January 2012. SAFE members, other Fairfax County employees, and most of the Board of Supervisors all breathed a collective sigh of relief. The report supported the continued use of defined benefit pension plans citing the following factors:

Defined benefit programs continue to be the most efficient and reliable way to provide long-term financial security to career employees in retirement.

Such programs provide employers with a more predictable and cost-effective vehicle for delivering such benefits, even in the face of market volatility.

Defined benefit programs are a heavily utilized component of total compensation packages in the public sector and are necessary to maintain a competitive position in the attraction and retention of talented and skilled employees.

The defined benefit model was determined to best meet the requirements of Virginia state law. (Fairfax County Board of Supervisors 2012a)

Two relatively minor tweaks were recommended by Aon Hewitt dealing with the pre-Social Security add on for members of the Uniformed Retirement System, and the ability to buy unlimited additional service credits via unused sick

leave. In the case of the pre-Social Security supplement, Aon Hewitt noted that this benefit was not common in other local government pensions plans, and that it encouraged employees to retire early. Fairfax County also offers its employees the ability to enroll in a DROP account which encourages employees to stay on the payroll for an additional three years beyond their eligibility to retire. Aon Hewitt believes that these two generous provisions are essentially in conflict with each other and the county could look at gradually reducing the pre-Social Security supplement (Aon Hewitt 2012, 74). In terms of allowing unused accumulated sick leave to purchase additional service credits the report noted that Fairfax County's practice of having no limit on the amount leave that an employee can use was unique when compared to other governments in the region:

We also note that there is some exposure to the County in the way that the County's sick leave policy interacts with the defined benefit plan. In some cases, since the County does not limit the amount of sick leave that can accumulate over a career, significant sick leave balances can accrue. These significant balances can skew retirement benefits upwards for certain individuals. Note that we do not see this as a problem with the plans themselves but rather as a potential problem with the sick leave policy that impacts the defined benefit plan.

Practices at comparator jurisdictions vary, but in general they each have some limit to the impact that sick leave accrual can have on pension benefits . . . (Aon Hewitt 2012, 75)

Aon Hewitt recommended that limits be imposed on how much leave could be utilized to purchase additional pension service credits.

Soon after the report was released, the board of supervisors held a two-day retreat to consider its priorities and set a course of action, "for a sustainable future" (Fairfax County Board of Supervisors 2012b). Each board member publicly listed their agenda items, and only three supervisors listed employee pensions as a priority. Supervisors Cook and Herrity, the only two Republicans on the Board, both expressed disappointment with the Aon Hewitt report, while the chair of the personnel committee, Penelope Gross, anticipated a robust discussion (Ibid). Board Chair Bulova's post retreat summary of the agreed upon common themes referenced the pension issue by stating that the Board would, "continue discussion of benefits" (Fairfax County Board of Supervisors, 2012c). There was a follow up discussion by the Board's Personnel committee as well as lobbying by SAFE to block or minimize any change in the defined benefit plan. Ultimately the board decided to limit the amount of sick leave that can be utilized to purchase additional service credits. Employees hired after June 30, 2013, will only be able to utilize 2080 hours, or

the equivalent of one year of additional service credit, for calculating their pension benefit. The pre-Social Security supplement was left untouched.

Analysis. Aon Hewett's study of Fairfax County's employee pensions initially caused concerns among public safety employees and their organizations. When the report came out in favor of maintaining the defined benefit plan, it gave a majority of members of the board the cover needed to avoid a contentious fight with employee organizations. County Executive Anthony Griffin⁶⁶ cited the pension plan as one of the reasons why the County is able to recruit and retain an "extremely high quality workforce, . . . [and is] able to provide the level of service which make [sic] Fairfax County great (Fairfax County Board of Supervisors 2012a). Griffin credited the employee organizations, especially IAFF Local 2068, in holding off any major changes (Griffin, interview 2013). Board Chair Sharon Bulova stated that they retained the defined benefit plan because they value service and want employees to remain with the County (Bulova, interview 2013). Perhaps the best summary of the convergence of interests among the employees, their representatives and a majority of the

⁶⁶Unlike Montgomery County, the County Executive in Fairfax County is hired by and reports to the Board of Supervisors.

board was made by an active board of supervisors member stating that the report come out "exactly as we wanted it."

From 2005 to 2013, public employee unions donated nearly \$310 thousand to the political action committees of the incumbent members of the board of supervisors, with IAFF Local 2068 spending nearly \$230 thousand or two-thirds of the total. Despite the lack of statutory bargaining rights, the robust political activities of the IAFF, and more recently the SEIU, provided public safety employees with a suitable vehicle to successfully block any meaningful rollback of current pension benefits.

Proposed Changes in Pay Structure by Fairfax County Executive

A similar outcome occurred when the Fairfax county executive attempted to reorganize the pay structure for all employees, including uniformed public safety forces. As indicated in Chapter 2 Fairfax County adopted a pay policy of being at the top half of the average salary of comparable jurisdictions in the metropolitan Washington DC region. Public sector employee compensation systems generally consist of two components; a pay band with minimum and maximum salaries, which can be further differentiated by years of service.

Theoretically, an employee can start at the first step of the pay structure and progress upwards based on performance and seniority, until she or he reaches the top of the pay band, which can take 15 to 20 years. This is also known as a step or merit increase resulting in a raise of 2 to 5 percent for each step. The second component in employee compensation is the across-the-board general increase known as the general wage adjustment (GWA), the cost-of-living adjustment (COLA) or market rate adjustment (MRA). For an employee who has not reached the top step of the pay band, a 2 percent GWA increase may actually result in an increase of 4 to 5 percent in compensation because of the step increase effect. During the 1990s, Fairfax County decided to modify the process by adding a performance component to the step increase for non-public safety employees; instead of an automatic move based on seniority, employee step increases are based on supervisory evaluations. When the plan was first introduced top performers were eligible for raises up to 10 percent, but this was soon scaled back to six percent (Bulova, interview 2013). Public safety employees remained on traditional step increases. Due to the effects of the Great Recession, Fairfax County did not fund step or merit pay increases from FY 2010 through FY 2014.

As part of the preparation for the FY 2014 budget, the county executive of Fairfax County, Edward L. Long, Jr. believed that the current model (when funded) of annually granting both a market rate adjustment⁶⁷ and a step or performance increase was not sustainable, and the practice of not funding them for several years was “challenging for employees as they look ahead and try to plan their careers” (Long, unpublished memo March 18, 2013). Long proposed a new pay structure called the Sustainable Training, Resources and Incentives for Valued Employees (STRIVE), which separated the step or pay for performance program and the market rate adjustment (MRA). Fairfax County employees would receive an MRA one year and a step or pay for performance increase the following year. This was proposed as a pilot program subject to evaluation at the end of five years. As part of the justification for the proposal, the county executive represented that it was both sustainable and would minimize employee uncertainty over future salary increases (Long, unpublished memo March 18, 2013). Table 25 and figure 25a compares the total estimated cost of STRIVE and the salary schedule it was designed to replace:

⁶⁷Market Rate Adjustment or MRA is Fairfax’s version of a COLA

Fiscal Year	STRIVE (Millions)	Existing Plan	Delta (Savings)
2014	\$1.23	\$47.74	\$46.51
2015	\$22.87	\$49.85	\$26.98
2016	\$22.85	\$52.06	\$29.21
2017	\$24.01	\$54.37	\$30.36
2018	\$24.06	\$56.77	\$32.71
2019	\$24.62	\$59.27	\$34.65
Total	\$119.64	\$320.06	\$200.42

Table 25. Projected Cost of STRIVE vs. Existing Salary Plan

A review of the above data supports the intuitive conclusion that implementing STRIVE would negatively impact public safety employees, especially for those at the early part of their careers when step increases occur annually. STRIVE was projected to cost \$119.64 million over the first six years of implementation, an average of \$18.30 million annually. Over the same time period, the cost of the current pay system providing both general adjustments and performance-based increases comes to \$320.06 million or an average of \$53.34 million annually. By adopting STRIVE Fairfax County would save over \$200 million for fiscal years 2014-2019, thus addressing the sustainability issue raised by Executive Long. Since public sector budgeting

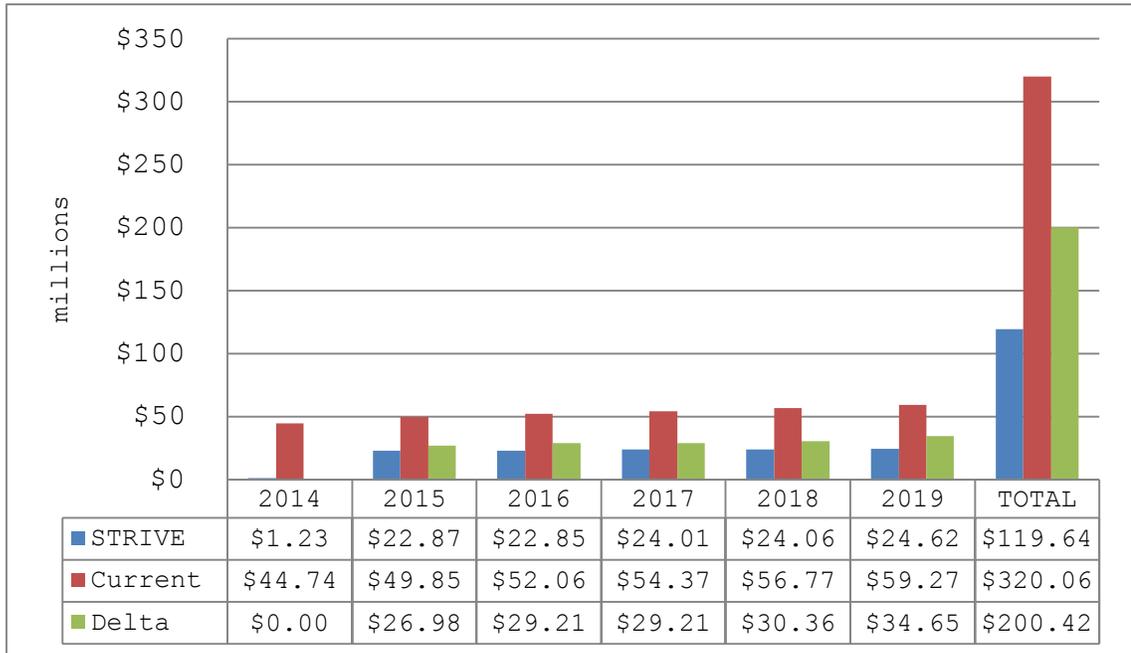


Figure 25a. Chart of the Projected Cost of STRIVE vs. Existing Salary Plan

(and policy development) is a zero sum game, the projected savings would all derive from expected future employee compensation.

County Executive Long's proposal to offer market based adjustments one year, and allow movement on the pay plan the following year (for public safety employees) was designed to bring more certainty to employee salaries and at the same time significantly reduce the cost of employee compensation over a five-year period by over \$200 million. Despite the fact that the proposal intimated that STRIVE would be funded on a regular basis, the reaction to the county executive's salary proposal from the public safety employee organizations was a resounding NO. Other Fairfax County employees have a performance-based increment, but

public safety employees have the step system which grants them five percent increase annually until they reach the tenth step. Making the steps biannual, and only granting market adjustment or cost-of-living allowances every other year was also seen as a major retrenchment by the county in terms of fairly compensating employees. As illustrated in tables 26 and 27, the potential near term reduction of salary and step increases was especially problematic for the less senior and lower paid public safety employees since their step increases occur every year. STRIVE would cost a newly hired police officer over \$24,000 in lost income during the first five years of service and nearly \$22,000 for a similarly situated firefighter. Table 28 demonstrates that, for a new or recently hired public safety employee planning to work 25 years, the proposed STRIVE reduction reached into the six figure range—\$390,000 over the course of 25 years, or \$15,600 annually for police officers, and nearly \$430,000 over 25 years or \$17,200 annually for firefighters. Adding to the mixture was the concern on the part of public safety employees about the impact of the reductions on other benefits that are salary based, such as life insurance, disability payments, and retirement. Lower salaries lead to lower pension payments, so the STRIVE reductions would not only negatively impact a

public safety employee during his or her working life, it would follow an employee into retirement as well.

Tables 26 and 27 illustrate the effect of STRIVE on firefighters and police officers for a five-year period (2014-2018) at different stages of their careers.⁶⁸ Table 28 illustrates the potential impact of STRIVE for both police officers and firefighters hired in 2014 and working for 25 years. (Analysis based on data provided by memo from Executive Long, March 18, 2013.)

Years of Service in 2014	Step	Base Salary	Cumulative Projected Earnings ⁶⁹ (2014-2018) under:		
			Current Pay Structure	STRIVE	Delta
1	1	\$50,942	\$293,540	\$271,545	-\$21,995
7	7	\$68,266	\$377,293	\$363,890	-\$13,402
10	9	\$75,266	\$391,688	\$385,422	-\$6,265
15	10	\$79,028	\$411,268	\$404,689	-\$6,578
20	11	\$82,981	\$431,837	\$424,930	-\$6,907

Table 26. Compensation Difference under STRIVE and Current System for Firefighters FY 2014-2018 (Analysis based on data provided by memo from Executive Long, March 18, 2013.)

⁶⁸Data summarized from County Executive Long's March 18, 2013 memo.

⁶⁹Both calculations assume full funding of step increases, and a 2 Percent MRA.

Years of Service in 2014	Step	Base Salary	Cumulative Projected Earnings ⁷⁰ (2014-2018) under:		Delta (rounded off)
			Current Pay Structure	STRIVE	
1	2	\$49,084	\$285,907	\$261,639	-\$24,268
6	7	\$65,778	\$363,543	\$350,629	-\$12,915
9	9	\$72,520	\$377,395	\$371,358	-\$6,037
15	10	\$76,146	\$396,265	\$389,927	-\$6,338
20	11	\$79,523	\$416,080	\$409,425	-\$6,656

Table 27. Compensation Difference under STRIVE and Current System for Police Officers FY 2014-2018 (Analysis based on data provided by memo from Executive Long, March 18, 2013.)

2014 Hire date	Base Salary	Cumulative earnings (2014-2038) under:		Delta
		Current Pay Structure	STRIVE	
Firefighter	\$50,942	\$2,831,830	\$1,952,085	-\$429,745
Police Officer	\$49,084	\$2,304,646	\$1,914,547	-\$390,099

Table 28. Cumulative Effect of STRIVE For Public Safety Employees Hired in 2014 and Retiring in 25 years (Analysis based on data provided by memo from Executive Long, March 18, 2013.)

⁷⁰See Fn. 46

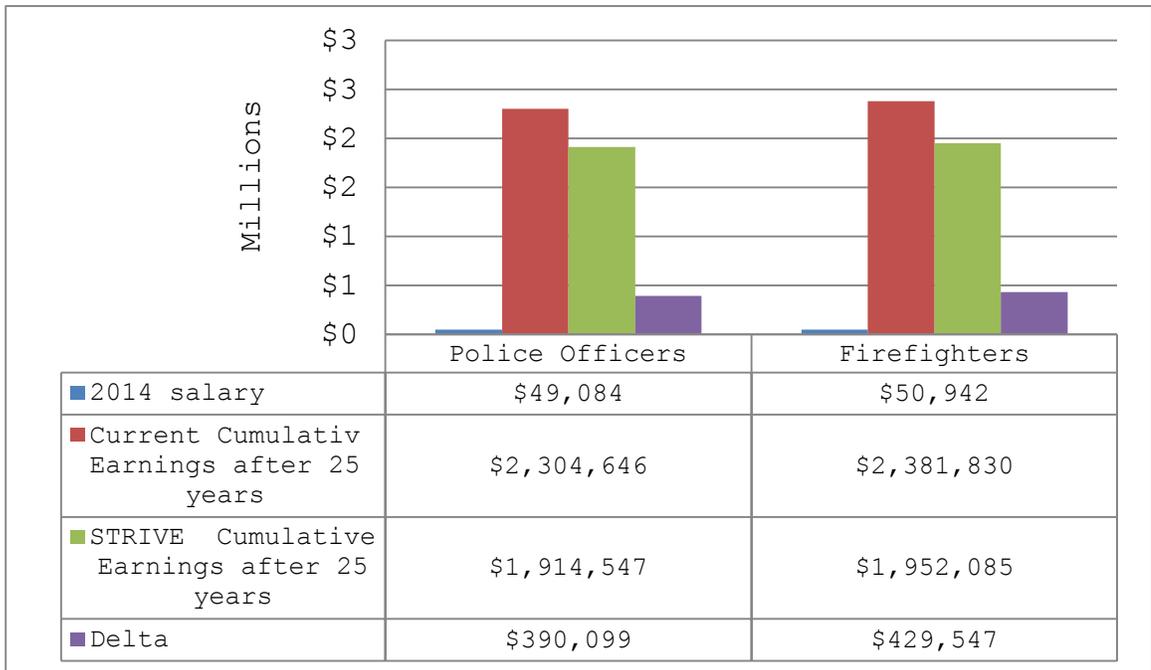


Figure 25b. Impact of STRIVE for Police Officers and Firefighters Hired in 2014 and Retiring After 25 Years of Service (Analysis based on data provided by memo from Executive Long, March 18, 2013.)

Figure 25b utilizes the same data to highlight the impact of the proposed STRIVE pay plan for Fairfax County police and firefighters under STRIVE.

Reaction by Employees and Follow-up Action

Given the potential pay loss from the STRIVE initiative it is not surprising that the proposal met with strong employee opposition, described by one member of the board of supervisors as “going bananas” (confidential interview, July 1, 2013). Led by IAFF Local 2068, organizations representing public safety employees united to oppose STRIVE and to pursue a different pay initiative (Niemec, interview 2014). Members of the Board of

Supervisors were strongly lobbied to kill the plan and at least one Supervisor called the proposal, "overly robotic . . . and advisory only." Board Chair Bulova convened a meeting with all organizations and the county executive that resulted in the removal of STRIVE from the FY 2014 budget and the initiation of a series of "workforce dialogues" with employees and their organizations on the macro and micro issues surrounding compensation.

Workforce Dialogue: Collective Bargaining under a different nomenclature?

For a local government in a state with a statutory prohibition against public sector bargaining, the Fairfax County workforce dialogues had all of the trappings of interest-based collective bargaining. Board Chair Bulova kicked off the workforce dialogues during the summer of 2013. Upper level management were directed by the board to,

work with employee groups to develop and refine an overall pay structure that provides compensation adjustments based on inflation and other economic factors; awards employees for satisfactory job performance; addresses longevity factors for long-tenured employees and develops a cohesive plan for conducting market studies and ensuring that county job classes maintain equity and competitiveness within the Region. (Fairfax County Board of Supervisors, unpublished agenda October 28, 2014)

The process included holding nine information sessions in September 2013, six focus groups in November and December 2013, and a countywide employee survey in December

2013. This was followed by two employee compensation work groups headed by Supervisors Gross and Cook, and seven meetings of the board's personnel and reorganization committee between February 2013 and October 2014. Work Group 2 met once a month for six months and was able to reach consensus on a framework to guide the board on employee compensation practices. The policy includes retaining the current range structure, funding the market rate adjustment (MRA) and providing annual increases based on an employee's position on the pay plan. In years when revenues are tight or budget deficits are looming, funding the MRA is given priority over performance and step increases since they reach all employees.⁷¹ (Fairfax County Board of Supervisors, unpublished agenda October 28, 2014). The process used by the board to involve employee groups in the long process of designing a new compensation policy not only emulated some of the methods utilized in collective bargaining, but went beyond it by having work groups headed by board members. Whether the process is transferrable to Montgomery County is an open question due to the fact that the county executive in Fairfax County is hired by, and reports to, the Board of Supervisors. In terms of outcome, the end result was a victory by the employee groups,

⁷¹The policy was unanimously adopted by the Board of Supervisors on October 28, 2014.

including public safety unions. Not only did the Board reject the county executive's STRIVE proposal to bifurcate MRAs and step increases, it unanimously adopted a compensation policy to guide its future deliberations, which preserves and protects the granting of both increases on an annual basis.

Public Safety Pension Modifications, Health Insurance Cost Shifts and Police Labor Law Changes in Montgomery County: Union Defeats

Public safety unions in Montgomery County had several major issues affecting their members which involved the county executive and the county council. On the surface, the environment in Montgomery County would appear to favor unions given their political involvement and the legal rights conferred by the County's collective bargaining laws, coupled with a county executive and county council composed of Democrats. As demonstrated in the next several pages, however, the presence of all of these variables does not guarantee a union favorable outcome.

Health Insurance Premiums and Employee Pension Contribution Increases

The Charter of Montgomery County requires the county executive to submit a balanced budget to the county council by March 15th of each year. Various provisions of the Montgomery County Code and labor laws require the county

executive to accept interest arbitration awards ⁷² as if they were negotiated between the parties and submit them to the county council for approval (Montgomery County Code, Chapter 33. Article V. Section 33-80 and 33-81(b)-Police Labor Relations Law; Montgomery County Code, Section 33. Article X. Fire and Rescue Collective Bargaining Law Section 33-152 and 33-153(k); Montgomery County Code, Chapter 33. Article VII. County Collective Bargaining Law Section 33-107 and 33-108(f) (5)). During the preparation of the budget for FY 2012, these two legal requirements came into conflict. The financial staff working on the document projected a deficit of nearly \$300 million out of a proposed budget of \$4.35 billion. The looming deficit was addressed with a combination of program cuts, fee increases, deferred payments into the retiree health fund (payments required to the defined benefit pension plans were not cut or reduced), wage freezes, and reductions in employee benefits. Despite the requirements of the county code and labor laws the proposed budget by the county executive did not fund the step increases or the general wage adjustments contained in the arbitration awards for

⁷²Interest arbitration occurs when the parties cannot come to a voluntary agreement during collective bargaining. Grievance arbitration, by contrast, occurs when the union claims that a particular management action (employee discipline or change in working conditions, etc.) violates the existing collective bargaining agreement.

all three unions, saving the County nearly \$6 million (Montgomery County Council 2011a, 8-4). Additionally, the county executive proposed making unilateral changes to health insurance premiums and prescription plans, and to reduce by 2 percent of payroll the amount contributed by the county to the defined contribution pension plan. The revenue loss would be offset by unilaterally making employees enrolled in the defined benefit pension plan contribute an additional 2 percent.

Taken together the suggested changes proposed to shift nearly \$30 million in costs from the county onto the employees; over a five-year period the cost shifting was projected to save county government over \$200 million (Montgomery County Council 2011a, 8-5).

Content of Proposed Unilateral Changes

Public safety and other union represented employees negotiated an 80/20 split for all health benefit premiums, including prescription coverage, regardless of the plan selected. The county executive's FY 2012 budget sought to change the premium split to 70/30 on the lowest cost plan, and to require employees to make up the difference if they opted for a higher coverage plan. Additionally, the county's proposal introduced the concept of a graduated income-based surcharge for health insurance for those

earning more than \$45,000, with a maximum rate of \$1,560 for incomes over \$95,000. County provided life insurance was to be reduced from two-times salary to one-times salary. All of the health insurance changes were suggested to be effective in July 2011, instead of January which is the normal plan year. Depending upon the plan selected, and the level of coverage, the increases ranged from \$400 to \$3,919 (S. Farber and Orlansky County Council memorandum May 16, 2011, 11). For example, an employee making \$45,000 enrolled in the Kaiser HMO plan with family coverage would have paid nearly twelve hundred dollars more per year. A police sergeant making \$85,000 enrolled in the United HealthCare HMO with family coverage would have to pay three thousand dollars more for the same coverage. Tables 29a-29f further highlight the potential increase in out-of-pocket costs employees would have under the Executive's proposal for the different health insurance plans (Ibid.). In addition to these health benefit changes, public safety employees would also absorb further out-of-pocket costs since the County Executive also proposed to increase by 2 percent of salary the amount employees would have to pay into their defined benefit retirement plan.

Single Coverage	FY 2011 Employee Cost 80/20 premium split	FY 2012 proposed 70/30 premium split	Additional salary based surcharge	Increase in dollars and percent
Medical	\$1,237	\$619	0	\$619
Prescription	NA	NA	NA	0
Dental	\$86	\$43		\$43
Vision	\$9	\$5		\$5
Total	\$1,332	\$667		\$667 or 50% additional cost

Table 29a. Additional Out-of-Pocket Health Insurance Costs for Single Coverage for Public Safety and Other County Employees under County Executive's Unilateral Proposal (FY 2012)HMO: \$45,000 Annual Salary

Family Coverage	FY 2011 Employee Cost 80/20 premium split	FY 2012 proposed 70/30 premium split	Additional salary based surcharge	Increase in dollars and percent
Medical	\$3,662	\$1,831	0	\$1,831
Prescription	NA	NA	NA	0
Dental	\$226	\$138		\$138
Vision	\$22	\$11		\$11
Total	\$3,960	\$1,980		\$1,980, or 50% additional cost

Table 29b. Additional Out-of-Pocket Health Insurance Costs for Family Coverage for Public Safety and Other County Employees under County Executive's Unilateral Proposal (FY 2012)HMO: \$45,000 Annual

Single Coverage	FY 2011 Employee Cost 80/20 premium split	FY 2012 proposed 70/30 premium split (additional cost)	Additional salary based surcharge	Increase in dollars and percent
Medical	\$1,027	\$514	\$910	\$1,424
Prescription	\$1,085	\$160	0	\$160
Dental	\$86	\$43		\$43
Vision	\$9	\$5		\$5
Total	\$2,207	\$722	\$919	\$1,632 or 74% additional cost

Table 29c. Police Sergeant-United Healthcare Single Coverage Plan, Rx High Option \$85,000 annual salary

Family Coverage	FY 2011 Employee Cost 80/20 premium split	FY 2012 proposed 70/30 premium split (additional cost)	Additional salary based surcharge	Increase in dollars and percent
Medical	\$3,410	\$1,570	\$910	\$2,480
Prescription	\$3,112	\$456	0	\$456
Dental	\$276	\$138	0	\$138
Vision	\$22	\$11	0	\$11
Total	\$6,550	\$2,175	\$910	\$3,085 or 47.0% additional cost

Table 29d. Police Sergeant-United Healthcare Family Coverage Plan, Rx High Option \$85,000 annual salary

Health Plan Family Coverage	Current Cost Share	FY 12 proposed 70/30 increase (additional cost)	Additional Salary based surcharge	Increase in dollars and percent
Medical	\$3,915	\$979	\$1,560	\$2,535
Prescription	\$3,295	\$273	0	\$273
Dental	\$331	\$83	0	\$83
Vision	\$26	\$7	0	\$7
Total	7,567	\$1,342	\$1,560	\$2,902 or 38.35% additional cost

Table 29e. Salary \$95,000, Family Coverage, CareFirst POS Standard Option Plan/Caremark High Option \$5/\$10 Plan

When the proposed budget was received by the council, all three unions vehemently opposed the projected modifications arguing that any variations in benefits were subject to collective bargaining and that the county executive's unilateral changes posed a large financial burden for employees who previously had to endure two years of salary freezes and unpaid furlough days. They lobbied county council urging them to "stand up to the integrity of the collective bargaining process" (FOP Montgomery County Lodge 35 2011). All nine members of the council were Democrats, and during calendar year 2012 the President of the council at the time was Valerie Ervin, whose career

Insurance Benefit	Executive's Proposal	Council Action	Projected Savings on an annualized basis (Council Version)
Health Insurance-Employee Cost Share	Increase 80/20 cost share to 70/30 for all medical, dental, vision, and standard Rx; add a surcharge for higher salaried employees	Keep 80/20 for HMO Change all other plans to 75/25 and eliminate salary based surcharge;	\$4.62 million
Prescription drug coverage	Mandate use of generics, or have employee pay the difference; eliminate coverage for erectile dysfunction medications.	Allow brand name drugs if required by provider; limit erectile dysfunction drugs to six per month	\$0.70 million
Prescription drug co-pays	Base employer premium split on standard option plan; increase 90 day mail order copay from one month copay to two month copay	Agree to 75/25 split for standard option, employees selecting higher option pay the difference; Maintain one month copay for three months mail order supply.	\$1.47 million
Life Insurance	Reduce coverage from twice salary to one times annual salary; increase premium cost share to 70/30	Accept reducing coverage to one times annual salary; move copay to 75/25	\$1.20 million
Long Term Disability Insurance	Change premium split to 70/30	Change premium split to 75/25	\$0.01 million

Table 29f. Changes made by the Montgomery County Council to Insurance and Prescription Drug Coverage Plans

background includes working as an organizer for the United Food and Commercial Workers Union (UFCWU) and serving as the Dean of Students at the National Labor College in Silver Spring, Maryland. During the election cycle of 2006-2010, seven out of the nine Council members were endorsed by and received over \$117,000 in aggregate campaign contributions from all three unions.⁷³ An argument can be made that the council would give due deference to concerns of the unions representing county employees. During its deliberations the council did tweak the Executive's proposals to lessen the burden on individual employees but also added several additional changes affecting employees. The proposed 70/30 health prescription and other related insurance premium splits were scaled back to 75/25, keeping the 80/20 ratio for employees in the two HMO plans. Income based surcharges were eliminated. The council acted to base the employer subsidy for prescription coverage on the standard option, with the option of buying up if an employee wanted the high option plan. The 2 percent increase in employee payments into the defined benefit pension plan was accepted but stretched out over two years, and the 2 percent reduction (from 8 to 6 percent) provided

⁷³Councilmembers Andrews and Berliner did not receive any contributions from unions representing County employees. Councilmember Floreen did not receive campaign contributions from the FOP.

by the county for employees in the defined contribution plan was limited to FY 2012 only. The additional cost of the health insurance changes was capped at \$1,180, depending upon the option selected by the employee, and all changes were pushed back to take effect in January, instead of July as proposed by the Executive. The council also added a number of employee based changes not contained in the Executive's FY 12 budget (see Table 29g): it capped the cost-of-living increases for retirees at 2.5 percent for new and current employees after June 30, 2012, and limited retiree eligibility for health care to employees who worked at least ten years prior to retiring. Projected five-year savings under the Council's rewrite of the Executive's plan increased to \$273 million (S. Farber and Orlansky County Council memorandum May 16, 2011, 7).

Council staff estimated that county government would save \$19.03 million on an annualized basis upon the adoption of these changes in employee benefits to the Executive's budget. All three unions continued their opposition, seeing the Council's action as only slightly less onerous than the Executive's proposals. They felt that changes in employee benefits were legitimate subjects of collective bargaining, not for unilateral action by either the Executive or council. The Fraternal Order of Police

Lodge 35 complained that, "Not a single politician on the County Council stood up for the integrity . . . [of] the process . . . in an unprecedented act they not only voted to strip and reduce the benefits of police officers . . . they unilaterally voted to impose their terms without bargaining." (FOP Montgomery County Lodge 35 2011). The changes made in FY 2012 have remained in place in subsequent budget submissions.

Benefit	Executive's Proposal	Council Action	Proposed Savings
Defined Contribution Retirement	Reduce county contribution by 2%	Accept the reduction for FY 12 only	\$4.86 million
Defined Benefit Retirement (all public safety)	Increase employee contribution by 2%	Accept the increase employee contribution, but phased in over two years	\$3.02 million
Defined Benefit-Cost of Living Provision (COLA)	No Proposal	Cap COLA at 2.5% for new hires, and current employees for all service beyond 2012	TBD
Retiree Health	No Proposal	Change minimum service eligibility from 5 years to 10 years	\$3.15 million in OPEB cost avoidance

Table 29g. Changes made by the Montgomery County Council to Retirement and other benefits

Council Action on Public Safety Service Connected Disability Retirement

Background. Most, if not all, governments in the United States provide income maintenance protection to employees—firefighters, police officers and other public safety workers who become disabled due to a work related illness or injury especially. In Montgomery County, employees on a short term disability are protected through the Maryland State Workers Compensation law which provides free medical care and income protection of 66.66 percent of salary. Employees with illnesses or injuries which prevent them from returning to work can be referred to a county panel of medical doctors for an evaluation and determination of their eligibility for a service-connected disability retirement (SCDR). Prior to 2001, the SCDR for police officers, deputy sheriffs and correctional officers allowed for a finding of partial disability with a minimum benefit of 25 percent of salary and total disability. In 2001, as a result of collective bargaining with Lodge 35, FOP and Local 1994 MCGO, the two-tier system was eliminated, and replaced by a one-tier approach paying 66.66 percent of current salary if the injured or ill public safety employee could not perform any part of her or his duties. The unintended or unforeseen consequence of

this decision resulted in partially incapacitated police officers, deputy sheriffs and correctional officers obtaining full retirement even if the injury or illness did not prevent the employee from performing most of their duties and responsibilities, since Montgomery County requires all officers of all ranks to pass the same set of standards. It also made the SCDR more lucrative in some cases than a normal retirement given that it is tax exempt and does not integrate with Social Security.⁷⁴ As an example, a verified injury or illness may prevent a police officer or deputy sheriff from successfully completing the annual firearms or physical qualifications required by the Maryland Police and Correctional Training Commission. A higher ranking police officer with 20 years of service is required to pass the same set of standards as a police officer with two years of service. Failure to pass the standards due to a service connected injury or occupational illness can allow the officer to retire with service connected disability pension of 66.66 percent of current salary, free from federal income tax and exempt from integration with Social Security. Firefighters are under a different formula. As a result of collective bargaining

⁷⁴The tax exemption of service connected disability pensions is determined by the Internal Revenue Service. See IRS Publication 525. Exemption from the Social Security integration requirements was collectively bargained.

Montgomery County firefighters achieved a DROP option in 1998, and agreed to a two-tiered system for SCDR. Initial disability retirements are awarded at 50.5 percent of final salary. The retired firefighter can either apply for Social Security disability award or submit to an exam by a county retained vocational rehabilitation expert in order to receive a higher service connected disability award. If the SSA or the county's expert certifies that the disabled retiree meets the Social Security guidelines for total disability the county's SCDR award increases to 70 percent (Montgomery County ERS 2015, 15). From 2000 through May 2009, only 15 percent of firefighter SCDRs resulted in the awarding of the higher 70 percent benefit level (Montgomery County OHR, unpublished internal document).

A number of events occurred during 2006-2008 that highlighted the problems with the County's SCDR program. Several FOP bargaining unit members in late 2006 were accused of submitting false timecards, indicating that they were on the job, while simultaneously working security for a private property management company. Ultimately, they pled guilty to a misdemeanor and resigned from the police department. Three of the involved officers applied for and received SCDRs based on documented injuries which occurred years ago. The pensions ranged from \$27,000 to \$36,000

(Montgomery County OIG 2008). During the same time period, two high ranking, non-bargaining unit police officers, with 25 or more years of service and eligible for normal retirement, submitted applications for, and received, SCDRs and subsequently accepted public safety positions in other jurisdictions. In both cases the injuries occurred earlier in their careers and they were able to come back and worked until they submitted for retirement. One of the high ranking police management employees retired under normal procedures, and subsequently reapplied for an SCDR. These cases came to the attention of the county executive who, while lacking the authority to deny the SCDR, directed the Office of Human Resources to form a multi-department task force to conduct a review of the entire process, "I'm concerned that our system for dealing with claims for service-connected disability retirements isn't working the way it should, and hasn't for some time" (Leggett unpublished memo). The group met for nine months and found that for the past eight years 2,141 employees retired, including 587 sworn public safety employees, and that 292 (13.5 percent) were granted SCDRs. Nearly 40 percent of the public safety retirements (226 out of 587) were service connected, and over three-fourths of the disability retirements (226 out of 292) consisted of sworn public

safety employees. The data indicated an overrepresentation of police officers receiving SCDRs, especially when compared to service connected retirements in surrounding jurisdictions: Prince George's stood at 25 percent, Anne Arundel County at 23 percent, Howard County at 4 percent and Fairfax County at three percent. The changes recommended by the Task Force include:

1. Change the Montgomery County Code to allow a denial of benefits if an employee is being terminated as a result of intentional wrongdoing, such as a felony, fraud, or recklessness.
2. Consider changing the current broad "disabled" qualification into two—"fully disabled" and "partially disabled"—each with their own criteria and different benefits.
3. Require a disability retiree to undergo a periodic physical examination during the five-year period following retirement and periodically thereafter until age 55 and/or 60 to determine if the individual can return to work or continues to meet the criteria for disability retirement benefits.
4. Consider as a factor in deciding whether to award or reduce service connected disability retirement whether job-related injuries are not reported or not reported in a timely fashion.
5. Restrict retirees from being able to file for disability retirement after they retire, excepting claims for occupational disease such as those for heart and lung disease relating to police or fire-fighting activities.
6. Change the law to require that non-service connected disability beneficiaries and service-connected disability beneficiaries' benefits integrate

with Social Security at normal retirement age - as is the case with normal retirement benefits.

7. Require that required periodic physical examinations be performed by the Office of Human Resources' Office of Medical Services. (Montgomery County Government 2008)⁷⁵

County Council Involvement, Part I

Roughly parallel to the timeline of the OHR-led work group the County's Inspector General (OIG) launched an investigation into the administration of the service-connected disability retirement program. A report was issued in September 2008 wherein the OIG stated that the internal controls utilized by OHR and the Police Department were inadequate to protect the SCDR program from abuse, and it called for changes in program oversight as well as a reexamination of SCDRs already approved to determine if the disabling conditions were still present (Montgomery County OIG 2008, 4-9). The combination of the internal OHR report, the OIG report and media coverage resulted in the county council drafting a bill to modify or eliminate the perceived abuses in the program. The first attempt was made in December 2008 with the introduction of Bill 37-08, which called for the creation of a two-tiered system and the ability to deny a pension to an employee who had committed

⁷⁵ The memo noted that changes to pension eligibility and benefits received were subject to negotiations with the County's bargaining units.

an offense that would justify removal for cause. Four work sessions were held by the council committee reviewing the legislation, and the unions lobbied against the bill stating that the changes sought by Council were subject to collective bargaining with the Executive. Bill 37-08 was enacted by the council on May 12, 2009. It tweaked the number and method of selection of examiners for the Disability Review Panel and added certain time limits as to when an injury or illness can be considered relevant for determining a service connected disability medical condition.

The attempt to link criminal behavior to SCRD denial was failed and the effort to legislate a two-tier solution was not part of the enacted legislation. Instead the council substituted language in the bill stating that, "disability benefits are a mandatory subject of collective bargaining with the appropriate certified employee representative," (Bill 37-08, lns. 517-518). Furthermore, the Executive was legislatively mandated to negotiate a two-tiered system by July 2010, and bring the results to the council for enactment (Ibid. lns. 519-525).

County Council Involvement, Part II

Several rounds of bargaining ensued but ultimately the County and the FOP were not able to reach an agreement on

these contentious issues. Another piece of pension legislation which sought to enact several changes, Bill 45-10, was introduced by the council on July 27, 2010, including a two- or multi-tier system and a method for preventing employees who broke the law from receiving service connected disability retirement from Montgomery County. Mindful of the collective bargaining statutes and previous statements, the council subcommittees considering the legislation sent a letter to the executive branch and the affected unions on October 25, 2010, asking them to meet and bargain over the issues at hand, including a two- or multi-tiered system for determining partial or full disability. The parties met over the course of nearly a year to discuss changes to service connected disability retirement but failed to come to a mutual agreement. Unions argued that the current IAFF system was the product of bargaining in which Local 1664 gained a DROP program in exchange for accepting a two-tiered system, whereas the current process was a one-way proposal favoring management only. They also viewed the proposal to deny service connected benefits to employees who committed an offense leading to termination as having the unintended consequence of impoverishing the offenders' families.

Given that the impact of the proposed changes would fall mostly on police officers, FOP Lodge 35 was the most active union in fighting the proposals. FOP proposed a three-tiered system: 60 percent for partially disabled, 66.66 percent for members who meet the Social Security criteria for total disability, and 90 percent of final earnings disability benefit for officers who suffer a traumatic injury such as paralysis or loss of a limb. FOP also suggested other changes to the pension plan including a slightly reduced benefit for future retirees and higher payroll deductions: from 4.75 percent to 5 percent for those under the Social Security Wage Base of \$106,400, and from 8.5 percent 10 percent for those above the Social Security Wage Base. On June 28, 2011 County Council by a vote of 7-1-1 enacted Bill 45-10 into law without any of the substantive changes proposed by the FOP. It contained provisions for a two-tiered system of determining service connected disability retirement payments corresponding to the IAFF process: 52.5 percent for partial disability and 70 percent for an injury or disability meeting the Social Security standards. Bill 45-10 prohibited granting an award to employees who "committed an offense that would justify termination for misconduct" (lns. 302-304). To make certain that the intent of the legislation would not get bogged

down during implementation, Bill 45-10 contained a provision overriding the County and Police Bargaining Laws stating that, "the implementation of any amendment to County Code Chapter 33 in Section 1 of this Act concerning disability retirement is not subject to collective bargaining with a certified representative of employees in any bargaining unit." (lms. 392-395). In a follow up comment, the Washington Post editorially applauded the county council for having the, "political spine" to stand up to the unions and ending a "police scam." (Washington Post editorial, November 10, 2014)

Montgomery County and Fraternal Order of Police: The Demise of Effects Bargaining

Section 33(paragraphs 75-85) of the Montgomery County Code⁷⁶ authorizes Montgomery County government to bargain with the duly authorized representatives of the sworn police officers of the County, which is Lodge 35 of the Fraternal Order of Police (FOP). Within the Police Collective Bargaining law is a core section delineating the subjects of bargaining as well as the rights retained by management. Indeed, the catalogue of management rights in the police bargaining law is quite impressive and at first

⁷⁶Also known as the Police Collective Bargaining law.

glance suggests that the employer retains much of the discretion enjoyed prior to the advent of statutory negotiations:

(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. (MCC Section 33-80(b))

As explored below, Montgomery County's Police Collective Bargaining law not only gave the certified bargaining agent the right to negotiate over the traditional areas of wages, hours and working conditions but despite the above enumeration of management rights,

also restricted management's ability to implement decisions in a timely manner.

What was unique to police bargaining in Montgomery County was the effects bargaining provision of the Police Bargaining Law requiring bargaining on, "The effect on employees of the employer's exercise of rights listed in subsection (b)" (Montgomery County Code Section 33-80(a)(7)). The Police Bargaining Bill, enacted by the Council in 1982, was the first collective bargaining in Montgomery County, but the original draft did not have the effects language. It was added during the committee work session and survived a motion to delete by a 3-2 vote (Drummer 2011, 4). Later attempts by the other two unions in Montgomery County to win similar rights in their separate collective bargaining bills were unsuccessful, but the Council granted both MCGEO and Local 1664 IAFF a more limited and focused right to negotiate with management when the exercise of management rights causes a loss of bargaining unit positions. In such cases the unions can demand to bargain over the amelioration of management's decision for employees (Montgomery County Code, Section 33-152(a)(7) and Section 33-107(a)(7)) but not over any other employee impact. Thus, Lodge 35 of the Fraternal Order of Police enjoys a bargaining advantage which was not granted

to other public safety employees in Montgomery County, nor conferred by other Maryland local governments with collective bargaining to their police officers or other public safety employees.

Effects bargaining surfaced as a legislative issue in Montgomery County during calendar year 2000. Bill 10-00 was introduced on March 14, 2000, at the request of the FOP to bring Police Sergeants under the scope of the police collective bargaining law. Additionally, County Executive Douglas Duncan proposed adding police lieutenants and captains in separate bargaining units from the rank and file police officers and sought to scale back effects bargaining for these supervisors (Drummer 2011, 5). In explaining the need to limit effects bargaining for police supervisors, the county executive's representative cited the notification requirements and subsequent negotiations needed when management wants to make a schedule change:

Before management may proceed to initiate a change in how employees are scheduled . . . or assigned, the effect of the changes on employees may be subject to bargaining The result of any "effects" bargaining may place limitations on management's ability to act such as a notice requirement, waiting period, opportunity for comment, compensation, etc. before a schedule change . . . may occur. (Torgesen, memo April 7, 2000. In Drummer 2011, 18)

FOP Lodge 35 opposed adding lieutenants and captains and creating separate bargaining units for supervisors, and the

roll back of effects bargaining for sergeants, claiming that the

issue has been exploited and misunderstood. Most collective bargaining involves mandatory subjects of bargaining not 'effects.' 'Effects bargaining' exists even when a statute does not create it, for there is no bright line test to determine if a matter is a mandatory subject of bargaining or an effect of the exercise of a management right. (Bader, memo June 2, 2000. In Drummer 2011, 27)

In this instance the County Council supported the FOP and enacted Bill 10-00 to include sergeants in the same bargaining unit as rank and file, made no changes to the effects bargaining clause and took no action on the county executive's request to allow lieutenants and captains the right to have collective bargaining.

Nearly eleven years later the issues of effects bargaining again came to the attention of the Montgomery County Council, in the form of a recommendation from the Organizational Reform Commission (ORC), an ad-hoc advisory group tasked by county council to recommend changes in the structure and process of county government with the twin goals of increased efficiency and decreased expenditures. ORC spent approximately six months on four different subgroups:

1. Consolidation or restructuring of County agencies or departments

2. Consolidation of overlapping functions, programs, and services
3. Workforce cost and management
4. Privatizing, contracting out, or innovative ways of providing government services

Under the Workforce cost and management area, ORC made the following four procedural recommendations to modify the County's collective bargaining process:

- 1) Make the collective bargaining process more transparent and increase opportunities for public input.
- 2) Modify the criteria for arbitrators to use in addressing a collective bargaining impasse.
- 3) Change the method for selecting the arbitrator for collective bargaining.
- 4) Make the scope of bargaining consistent for all County agencies. (MCORF 2011, 11)

The last recommendation appears to be innocuous, but in reality it is a substantive and significant proposal to amend the police collective bargaining law by eliminating effects bargaining. ORC claimed that effects bargaining eroded police management rights, devolving to a state where most management decisions are subject to bargaining:

"Effects bargaining" has hampered the ability of the Police Department to issue directives to govern how police officers must operate. For example, several years ago, the Police Department had to bargain with the FOP over a directive to implement the new computerized police report writing system. This bargaining delayed the implementation of a new system that County management established to improve efficiency. The FOP has recently delayed the

implementation of all directives by refusing to respond to them. (MCORF 2011, 37).

The Organizational Reform Commission made three other recommendations concerning the scope and conduct of employee collective bargaining, and legislation was introduced to enact them into law. Bill 19-11 sought to strengthen the public hearing process before enactment of collective bargaining changes and to change the dates for the declaration of impasse and conduct of arbitration hearings. Bill 20-11 sought to change the interest arbitration process by adding additional criteria to be considered before a decision is awarded. It also changed the process by which the arbitrator is chosen by creating a tripartite panel where the chair is selected by both sides or from a list of neutrals endorsed by council. Neither of these modifications to collective bargaining were endorsed or enacted by the county council.

Bill 18-11 introduced on June 14, 2011, proposed to make the scope of bargaining of the police collective bargaining law harmonious with that of the county government and firefighter collective bargaining laws by eliminating effects bargaining. The council directed a series of questions to Police Chief Tom Manger concerning examples of issues where effects bargaining impaired his

management of the Police Department (See Appendix II). Chief Manger gave 15 examples and stated that the practical interpretation is that the all management decisions fall under the effects bargaining provision requiring notification of the union and, "an opportunity to accept it or demand to bargain. The bargaining process can last days or years" (Drummer 2010, 32). Of the 15 examples cited in his response he highlighted the attempt to mandate the use of a "packet writer" electronic reporting system to replace the paper report forms. FOP demanded to bargain the mandatory use of packet writers in early 2006, and it was not until May 2009 that an agreement was reached (Ibid). Chief Manger also cited limitations on the use of automatic vehicle locator data in police officer disciplinary hearings and the example of having to utilize printed communications in addition to email since, "FOP members are not required to read or maintain an email account with the County." (Ibid.).

FOP Response and County Council Action

Bill 18-11 sought to curtail a bargaining right enjoyed by FOP Lodge 35 for nearly thirty years; therefore, the union strongly objected to the legislation claiming both procedural violations and substantive distortion of facts. It stated that 95 percent of the police department's

business was outside the scope of effects bargaining, and they had no desire to engage the department in bargaining over them. In terms of process, the FOP charged that the minutes of the ORC reflect no discussion of effects bargaining and that it viewed the ORC process as, "political and devised in secrecy without any scrutiny or accountability . . . Their conclusions are based upon a false premise . . . Either the commission made up what it asserted to be facts, or someone gave false and misleading information." (Zifcak, memo July 12, 2011, In Drummer 2011, 40). FOP also complained that they met with the commission and were not given an opportunity to view or respond to the allegations made against effects bargaining, and that this topic was not within the charge of the Commission.⁷⁷ It viewed the recommendation as the product of an agenda that was hidden from public view until the report was released.

In terms of substance, FOP disputed the claims made by the police chief that the union was responsible for delaying or defeating management decisions that it did not approve of. One example was the video cameras in cruisers—he contended it was the county that withdrew the request to bargain over them when money intended for their purchase

⁷⁷One of the Commission members abstained from officially endorsing this recommendation citing the same argument.

was redirected elsewhere. It was not until 2007 that the issue resurfaced, and an agreement was reached in 2008. FOP also stated that the PacketWriter delay was due to technical problems and management's failure to engage in meaningful negotiations over implementation. "Had the County been ready to require mandatory use of PacketWriter for the submission of reports, it could have declared an impasse once good faith bargaining had occurred and implemented the requirement within a month. The facts demonstrate that the County was not ready for implementation." (Handman, memo February 16, 2011. In Drummer 2011, 50). FOP stated that effects bargaining works, and that it has never had any, **"adverse impact upon our ability to respond to calls for service or to protect the public."** (Ibid., emphasis original).

On July 14, 2011, two days after the public hearing, the council held a work session on Bill 18-11 by the Public Safety Committee and the Government Operations and Fiscal Policy Committee. Much of the testimony was repeated from the earlier hearing, with police management arguing for the legislation and the county unions, especially the Fraternal Order of Police, voicing strong opposition. After considerable discussion the two committees voted 5-0-1 to send the legislation to the full council for final action.

Bill 18-11 was subsequently enacted by the full council on July 19, 2011, one week after the public hearing, receiving the support of all nine members of the county council. FOP members packed the hearing room and at times interrupted the proceedings by shouting at the podium or walking out (Laris 2011). Both sides repeated their arguments; police management citing it as a common sense approach, "intended to make the department run more smoothly," while the FOP dismissed the examples used to support management claims of union obstruction as, "petty issues meant to obscure the more fundamental rights at stake" (Ibid.) In a statement on its website, the FOP slammed the entire proceeding as a "sham process . . . They changed a twenty nine year old law [sic] in two days based upon the druthers of a politically appointed bureaucrat . . . "(FOP Montgomery County Lodge 35 2011b). In case there was any doubt as to the reference, the sentence was footnoted with the following statement:

Tom Manger makes \$216,000 as police chief and over \$100,000 in retirement from Fairfax County. He has his healthcare provided, and has a 401(a) from Montgomery County. He has never been a police officer in Montgomery County and previously served as police chief in Fairfax Virginia – a right to work state. (ibid. footnote)

Lodge 35 also complained that the timeframe from public hearing to enactment was tight, giving them no opportunity to prepare a response to management's claims and that requests for a postponement were rebuffed. (FOP 2011).⁷⁸ In a press release following the vote, the council public relations office credited the ORC for recommending the change, and the police chief for explaining how "effects bargaining" curtailed his ability to efficiently administer the department (Montgomery County Council 2011b).

Discussion and Analysis

Both Montgomery County and Fairfax County had significant revenue shortfalls as a result of the global and national economic recession, especially during the fiscal years 2009-2013. These revenue shortfalls translated into budget deficits requiring major reductions in expenditures. Unpaid employee leave, better known as a furlough, was utilized as a tactic to reduce the budget. Employees in Montgomery County including uniformed public safety, were required to take three, five or eight days of unpaid leave at a time of their choosing during fiscal year 2011, but the salary reduction was made in the beginning of

⁷⁸ FOP's testimony and subsequent unsuccessful legal fight to overturn Council's action is contained in Appendix II.

the fiscal year.⁷⁹ Fairfax County employees were furloughed for one day on January 3, 2009. Employee salaries and benefits were curtailed in both Montgomery and Fairfax Counties and in fiscal years 2010 and 2011 neither jurisdiction granted a general wage adjustment or cost-of-living increase. Montgomery County public safety employees also had to give up the general wage adjustments contained in their collectively bargained agreements (CBA) for FY 2010: 4.25 percent for FOP, 4.0 percent for IAFF, and 4.5 percent for MCGEO - represented correctional officers and deputy sheriffs. For MCGEO and FOP, FY 2010 was the third year of a three-year agreement. The IAFF three-year CBA expiring FY 2011 contained a 7.0 percent wage adjustment which likewise was not paid. Thus public safety employees in both counties were subject to wage freezes and concessions. Neither Fairfax County's policy of being in the top half in terms of compensation, nor Montgomery County's statute requiring bargaining over compensation and the collective bargaining agreements with agreed upon increases were sufficient to stave off the reductions necessitated by the effects of the global and national economic recession.

⁷⁹The number of unpaid leave days was positively correlated with earnings; higher salary meant more unpaid leave days, to a maximum of eight days.

Where there is divergence in the narrative concerns the actions taken by both county governments that went beyond the immediate need to enact a balanced budget, a process which even under the best of circumstances requires making major financial decisions in a time constrained and highly charged atmosphere. Both jurisdictions entertained proposals affecting long term compensation and retirement benefits with counterintuitive outcomes. Public safety employees in Fairfax County with no statutory right to bargain over wages or benefits were successful in preventing substantive changes to their pensions, and also blocked the STRIVE proposal which, if implemented, would have resulted in substantial reductions in lifetime income well into the six figures. Contrast with Montgomery County where public safety employees enjoy a comprehensive and robust collective bargaining law which is accepted as part of the public policy landscape, yet the unilateral changes to pension and health insurance premium cost share, disability retirement criteria, and the scope of bargaining for police officers were enacted by all or nearly all members of the county council. Thus despite statutory protections and campaign donations to County Council, the public safety unions were not able to prevail on core

economic and scope of bargaining issues in a jurisdiction with a Democratic political leadership.

CHAPTER 6

UNIONS, MANAGEMENT PREROGATIVES AND COLLECTIVE BARGAINING: THEIR EFFECT ON PUBLIC ADMINISTRATION

Introduction

Endeavoring to improve the economic benefits of members is not the only selling point made by unions for collective bargaining. They will also strive to expand their role and involvement in workplace issues, especially in the areas of employee working conditions and due process rights at the expense of management (Berman, *et al.* 2006; 278-280; Kearney 2009; 193-196; Mason and Stein 2009, 70; Nigro, *et al.* 2007, 215). Thus we can hypothesize that a local government with statutory collective bargaining will have less flexibility and will be more constrained in dealing with employee issues and concerns. Conversely, a local government without legal collective bargaining rights is assumed to enjoy greater flexibility and a relatively free hand in employee disciplinary matters.

This chapter analyzes the influence of statutory collective bargaining on employee due process rights and the ability of public safety leaders to manage and administer their agencies and departments. The methodology consists of examining certain provisions of the collective

bargaining agreements, buttressed by personal interviews of key stakeholders and an in-depth review of the role of collective bargaining laws to determine if there is a nexus in limiting management prerogatives.

Role of Personnel Regulations

Both jurisdictions have processes and procedures outside of collective bargaining laws concerning employee due process rights. Montgomery County public safety employees are protected by the collective bargaining agreement (CBA), and nonunion employees are covered by the Montgomery County Personnel Regulations. The personnel regulations can also apply to unionized public safety employees if the CBA is silent on a particular issue or topic, or if the employee voluntarily forfeits the CBA process and utilizes the process listed in the personnel regulations. Public safety employees in Fairfax County are prohibited from engaging in collective bargaining by state law, but are covered by the Fairfax County Personnel Regulations.⁸⁰ Moreover, there are a number of employee

⁸⁰§ 40.1-57.2. of the Code of Virginia states: "No state, county, municipal, or like governmental officer, agent or governing body is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents

organizations including local chapters of two national trade unions (the Service Employees International Union and the International Association of Firefighters) that aggressively represent Fairfax county employees. An evaluation of the two jurisdictions' regulations, illustrated in Table 30 below, shows similarities in limiting the ability of management to take actions concerning employees. Montgomery and Fairfax Counties both have progressivity in their disciplinary process, but Montgomery County has forfeiture of annual leave and within-grade salary reduction as additional tools to apply by management. Employees in both counties have a five-step appeals process with the final step going to a neutral adjudicatory body—the Merit System Protection Board in Montgomery, and the Civil Service Commission in Fairfax—having broad authority to make employees whole.

Status of Police Officers and Firefighters in the two Jurisdictions

Public safety services—police, fire and emergency services—are some of the primary services offered by most local governments including the two jurisdictions being examined.

with respect to any matter relating to them or their employment or service." (1993, cc. 868, 879.)

Jurisdiction	Montgomery County	Fairfax County
Authority	Authority to issue Personnel Regulations. The county executive must issue Personnel Regulations (these Regulations) under the Montgomery County Charter, Section 402 and Montgomery County Code, 1994, Section 33-7(b).	The Fairfax County Merit System is established by the Merit System Ordinance (Article 1, Chapter 3, Code of Fairfax County).
Promotions	Use of eligible list. If a department director determines that a vacant position should be announced as open for competition among qualified applicants, the department director must select an individual for appointment or promotion from an eligible list.	As far as practicable, and within the constraints of Chapter 7 of the Personnel Regulations, the policy for filling vacant positions in the competitive service shall be to foster and encourage career development and upward mobility through competitive promotional opportunities for eligible County employees
Discipline	Purpose of disciplinary actions. A department director may take a disciplinary action against an employee to maintain order, productivity, or safety in the workplace.	Disciplinary action will be taken only for good cause and after careful review of allegations with a goal, where appropriate, of correcting problem situations. However, disciplinary action must be taken when warranted to promote the efficiency of the Fairfax County service. The severity of the disciplinary action will be determined by the severity of the misconduct and review of the employee's work record
Progressivity of discipline	Oral admonishment Written reprimand Forfeiture of annual leave or compensatory time Within-grade salary reduction Suspension. Demotion. Dismissal.	Oral Reprimand or Warning. Written Reprimand. Suspension. Demotion. Dismissal

Jurisdiction	Montgomery County	Fairfax County
Steps in the grievance process	<p>Step 1: Immediate Supervisor</p> <p>Step 2: Department Director</p> <p>Step 3: Chief Administrative Officer of designee (Office of Human Resources)</p> <p>Step 4: Possible use of Alternative Dispute Resolution</p> <p>Step 5: Employees may file with the Montgomery County Merit System Protection Board (MSPB). MSPB decisions are binding</p>	<p>Step 1: Immediate Supervisor</p> <p>Step 2: Division Supervisor</p> <p>Step 3: Department Head</p> <p>Step 4: Grievability Determination by the county executive</p> <p>Step 5: If the complaint has been determined to be grievable, with a binding decision or non-grievable with an advisory decision as provided herein, the employee may file a request for hearing on the appropriate form with the Fairfax County Civil Service Commission.</p>
Remedies available to employees	<p>The MSPB may order appropriate relief, which includes but is not limited to the following:</p> <p>Retroactive promotion or reclassification with or without back pay. Change in position status, grade, work schedule, working conditions, and benefits. Priority consideration for an employee found qualified before other candidates are considered. Reinstatement with or without back pay. Corrective measures regarding any management procedure adversely affecting employee pay, status, working conditions, leave, or morale. Reimbursement or payment by the County of all or part of an employee's reasonable attorney's fees.</p>	<p>Dismissals - The panel of the Commission hearing the appeal may deny relief, reinstate the employee while imposing lesser disciplinary actions such as demotion or suspension, or reinstate the employee. On lesser forms of discipline, the panel of the Commission may deny relief, or may grant relief and impose certain conditions. Reinstated employees are made whole with regard to salary and benefits.</p>

Table 30. Comparison of the Personnel Regulations of Montgomery and Fairfax Counties. Montgomery County allows the collective bargaining agreement to supersede the Personnel Regulations. Unionized employees may follow the grievance process outlined in the text, or follow the grievance process described in the various agreements.

Their similarity in terms of a paramilitary structure along with an abundance of rules and regulations governing the activities of both the rank and file and management, lends itself to valid cross-jurisdictional comparisons to determine if statutory collective bargaining has an impact on the administration and delivery of these services. This next section of the dissertation focuses on the legal or contractual constraints imposed on both the behavior and activities of the frontline uniformed employees as well as the restrictions placed on management in dealing with them.

Montgomery County's police officers and management are guided by three distinct but related documents: the collective bargaining agreement (CBA), the general orders promulgated by the Chief, and in cases of misconduct or discipline the Law Enforcement Officers Bill of Rights (LEOBR), a Maryland state statute applicable to all jurisdictions within the State.⁸¹ Police personnel administration in Fairfax County is governed by the Regulations and General Orders of the department, promulgated by the Chief and the county executive. In cases of discipline, however, the police officer can ask for a hearing panel⁸², established under Virginia state law. A

⁸¹See, Annotated Code of Maryland, Section 3-104.
<http://www.lexisnexis.com/hottopics/mdcode/>

⁸²See Virginia Code Section 9.1-504

comparison of the documents and interviews with police department leaders suggests that unionized police officers in Montgomery County enjoy more procedural protections which results in greater constraints on the ability of management to administer the department.

Activities of Fairfax County police officers limited by the Chief's General Orders

The Regulations and General Orders in Fairfax County prohibit the following activities:

- Loitering, Sleeping, and Loafing on Duty.
- Malingering—no feigning of illness.
- Use of Tobacco Products On or Off Duty for employees hired after 1989.
- Consumption and Purchase of Intoxicants—off-duty consumption shall not impair the ability to report to duty.
- Use of Alcohol/Drugs—cannot be intoxicated in public, and must notify a supervisor if ingesting prescription drugs that may impair the ability to perform their duties.
- Personal Gain—Police Officers cannot use their positions for personal gain.
- Debts—Incurring and Payment—officers shall make every effort to pay all legal debts and obligations.
- Accepting Special Favors, Privileges or Discounts—officers shall not accept special discounts or other ailments for performing their duties.
- Other Transactions—Officers shall not engage in any commercial activity with prisoners or persons under investigation.

- Commercial Testimonials—Officers are prohibited from endorsing any private business or entity.
- Membership in Organizations—Officers cannot become members of any organization, except for the U.S. armed forces, which exacts prior consideration or constrains them from fully executing their duties.
- Political Activity—Subject to Fairfax County law, officers cannot endorse candidates nor solicit funds for political candidates.
- Personal Preferment—Officers shall not try to influence or ask anyone outside the police department to gain preferential treatment of any kind.
- Recommending attorneys—Officers shall not recommend attorneys to suspects, and are prohibited from acting as bail guarantor for suspects, except in the case of a relative.
- Secondary or Off Duty Employment—Permitted but officers must not engage in employment which presents a conflict of interest, nor where alcohol is served, nor serving as a private bodyguard, process server, or protection of management property during strikes or labor disputes. (Fairfax County Police Department 2011b, under Regulations)

Police Disciplinary Processes

Fairfax County utilizes a multi-step process in meting out punishment to sworn police officers who commit a violation. The authority to impose discipline comes from the police chief's general order, but Fairfax County officers can contest the discipline either by utilizing the process under Virginia statute or opting to have the case wind its way through the system, ending up at the county's

Civil Service Commission (CSC). The CSC is empowered to hear appeals on terminations, unsatisfactory service separations, demotions and suspensions, as well as complaints concerning the unfair application of specific personnel policies, procedures, rules, and regulations. Discrimination complaints by sworn employees—including a probationary employee—on the basis of race, color, religion, political affiliation, age, handicap, national origin, sex, or other specific non-merit factors are also within the purview of the CSC. Discipline ranges from oral admonishment or verbal counseling to written reprimand, suspension, demotion, and termination from employment as illustrated below:

- 1) Oral Reprimand/Verbal Counseling. Not subject to appeal.
- 2) Written Reprimand—To be prepared and presented to the employee by the commanding officer. May be appealed within 20 days of imposition.
- 3) Disciplinary Reimbursement—To be administered in concert with other disciplinary action and as specified in Section VII, Procedures.
- 4) Suspension—Without pay.
- 5) Transfer for disciplinary reasons.
- 6) Reduction in rank—To any lower level deemed appropriate.
- 7) Dismissal from the Department—The effective date of dismissal will be delayed for 20 work days to allow the accused employee the opportunity to exercise the right to appeal pursuant to General Order, unless

the offense that led to dismissal was determined by competent authority to have such a grievous impact on either the Department or the public as to require an earlier dismissal date. In such cases, the date of dismissal will be no sooner than ten work days, however, the employee may be placed on administrative leave until the date of dismissal. (Fairfax County Police Department 2011b, under Personnel Administration)

Thus the absence of a formal collective bargaining law does not translate into Fairfax County police management having an unfettered ability by to ride roughshod over officers in terms of discipline. Indeed, a former police chief complained about the aggressive nature of the defense mounted by organizations for an officer accused of violating policies or breaking the law, stating that "They sometimes behave as if no officer should ever be disciplined or fired, regardless of the violation" (Roher, interview 2012). Where the absence of formal bargaining makes more of a difference in favor of management, is in the area of managing the police department. For example, directives such as the mandatory wearing of protective equipment or types of uniforms without having to seek the approval of the police organizations. This approach was further supported by another former Fairfax County police chief who stated that he had good relationships with the leaders of the various police organizations and would listen to their concerns but

was then able to implement his decision without their approval or concurrence (Manger, interview 2013). Chief Manger cited examples where he was able to assist officers with family matters, such as placing a single mother on day shift and not rotating her out of the unit, as one area where he had flexibility to make policy and personnel decisions and, "there was no union to file a grievance" (Ibid).

Montgomery County's range of disciplinary actions is similar to the above. It also starts with oral admonishment, progresses to written reprimand, suspension, demotion, and finally dismissal for cause. The two jurisdictions, however, differ substantially with issues dealing with procedural rights and management prerogatives. Local labor law and the FOP collective bargaining agreement allow Montgomery County police officers to contest most disciplinary actions taken by management and request a hearing via the Law Enforcement Officers Bill of Rights (LEOBR), the Montgomery County Personnel Regulations (see Table 28 above), or through the process described in the union contract. Compared to the practice utilized in Fairfax, the Montgomery County grievance method is more formal, and the final determination is made by an outside, third-party arbitrator, and not a quasi-judicial panel.

Discipline and the FOP Collective Bargaining Agreement

The process and procedure for disciplining police officers in Maryland is covered by a statewide law known as the Law Enforcement Officers Bill of Rights (LEOBR). Under its provisions, the agency conducting the investigation must follow certain guidelines and protect the due process rights of the officer under investigation. Final disposition of the case is made by a three-member hearing board selected by the police chief, one member of which must be the same rank as the accused officer (Annotated Code of Maryland, Public Safety Article Section 3, Law Enforcement Officers Bill of Rights). Article 43 of the Police CBA allows police officers to request an alternate tripartite hearing board whereby the union appoints one member, the chief appoints the second member, and the chair is appointed by both parties, and is a practicing neutral arbitrator (FOP CBA 2012, Article 43, Section A.3). The decision of this board is final and binding on the department. The collective bargaining agreement also gives bargaining unit members additional due process rights: employees not covered by the LEOBR must be notified if they are under investigation and can request a 24-hour delay of any interview in order contact union a representative to be present at an interview. The union is also entitled to

receive copies of all charges and written complaints, and employees are given at least five days to respond before any action can be taken (FOP CBA 2012, Article 43, Section A.2).

Other Clauses in the CBA

A more in-depth analysis of several articles in the FOP Lodge 35 Montgomery County CBA illustrates the extent of the constraints it places on police management. The collective bargaining agreement consists of 122 pages and governs almost every aspect of police personnel management. The table of contents (see Appendix IV) demonstrates the scope of influence and power a union in a jurisdiction with collective bargaining possesses. There are 70 articles and over 20 appendices governing just about every facet of police working conditions, from determining the hours of administrative leave granted to the president of Lodge 35 to the procedure for obtaining a shoe allowance, including the clause that the color of the shoes obtained by officers assigned to bicycle patrol must be black (Police CBA Article 6, Sect. D); there is even a ten paragraph section on the procedures for shift hour assignment in the canine unit (Police CBA Article 15, Section V).

Police Chief Tom Manger, having worked his way up the ranks to Chief in Fairfax County before taking the top job

in Montgomery County, asserts that Montgomery County's police labor law and the resulting collective bargaining agreements makes the union president equal to police management and in some cases the union has greater influence. He believes that the rollback of effects bargaining has only marginally changed the power dynamic (Manger, interview 2013). Chief Manger cited an incident when he sought detectives to return to duty on Christmas Eve in order to assist a homicide investigation, but was unsuccessful due to restrictions in the collective bargaining agreement. The relevant provision in the CBA is the On-Call section which reads:

On Call

1. On-call status is a voluntary routine, rotating designation within specific units to determine the first officer to be contacted and offered the opportunity to volunteer for overtime work. Officers in an on-call status will be compensated for providing telephone assistance as set forth below.

2. Officers contacted by a supervisor, or designee, while on an on-call status shall be eligible for appropriate compensation as provided in this Agreement (Article 15, Section H).

The operative word in the above section is *voluntary*. Thus, an officer contacted for overtime work may decline the opportunity, or simply not answer the phone when it rings. Other sections of the CBA can be viewed as equally

inhibitory of management's ability to administer the department. Article 30 Uniforms and Equipment, for example, not only describes the type of equipment officers are given, but goes into great detail in terms of how they are to be used. Section B, of Article 30 requires the County to provide a specific type of firearm and holster, a level of detail that in Fairfax is left to the leadership of the department. Other sections of Article 30 describe how and when the uniform is to be worn, including the type of headgear and turtleneck sweater to be issued; the clause also describes the type of police badge to be issued to officers in special units, the type of baton issued, and the rank design of the insignia to be worn—no level of detail escapes attention (Article 30, Sections D, E, J, K). Nor is the department free to make changes to the equipment without the approval of the union. Article 30, Section 10 of the CBA states:

Non-Issued Uniforms and Equipment. Any equipment, uniform, or partial uniform not issued by the department or authorized to be worn by this agreement that is being used/tested by an officer or unit must be authorized by majority vote of the Safety Committee or Labor Management Relations Committee.

Arguably the most limiting and contentious section of the FOP collective bargaining agreement is Section 61, concerning the ability of police management to issue

directives. In conjunction with the Police Labor Relations Act, it sharply differentiates the differences between a jurisdiction with statutory collective bargaining, and one without (see Figure 26.). Article 61 gives substance to the Montgomery County police chief's statement that in matters of department administration and personnel issues, the union has as much, if not more, authority than management. It requires the department to forward any changes to rules, policies, and directives to the union for review. The department must designate if the proposed change involves a matter which is subject to bargaining and seek to engage the union in bargaining over the proposed changes. Directives and proposed changes which management deems as not subject to bargaining must still be forwarded to the union for review and response within 21 days. If the union deems it to be negotiable, and the Chief disagrees the issue is decided by an outside, third-party "umpire" under the authority of the Montgomery County Police Labor Relations Act. As discussed elsewhere, the FOP had an additional clause which gave the union the right to demand negotiation over any exercise of a management right which has effects on bargaining unit members. Even with the elimination of effects bargaining, the remaining clauses still provide FOP Lodge 35 the ability to demand to

negotiation over changes which it believes are mandatory subjects of bargaining and to delay the implementation of others since management is precluded from implementing them until the approval process is completed.

Impact of the Collective Bargaining Agreement—Fire and Rescue

Fairfax and Montgomery Counties have similar size fire and rescue departments. Fairfax County's Fire and Rescue Department approved budget in 2012 was over \$160 million, employing over 1200 sworn and civilian employees dispersed in 37 stations (Fairfax County Fire and Rescue Department 2012, under General Information). Montgomery County's approved budget in FY 2012 stood at \$280 million, employing over 1200 sworn and civilian employees dispersed in 35 stations and 13 other sites (Montgomery County OMB 2012, 3-157). Both have additional volunteer uniformed personnel under their command.

As with the police department, the personnel and administrative guidelines and requirements are spelled out in the Fairfax County Personnel Regulations and the Fire Chief's General Orders. Fairfax County's absence of formal collective bargaining and statutes defining the roles of management and labor allows the IAFF local and other

This agreement has been negotiated in the manner set forth in the Preamble.

Section A. Procedures for Review of Directives. Prior to forwarding proposed changes to directives, rules, and procedures to the FOP, the employer shall make a good faith effort to assign one of the categories listed below, Section B-D, to the draft. Draft copies of proposed changes to directives, rules, and procedures with the previously referenced designation shall be forwarded to the Union along with a copy of the current directive, rule or procedure (if applicable). All changes shall be identified in the draft document.

Each party shall, in writing, designate one representative to send and receive all documents specifically related to the Police Department required under this article. Each party shall, in writing, designate one representative to send and receive all documents not specifically related to the Police Department required under this article.

Section B. Changes to directives, rules and procedures which are a mandatory subject of bargaining. Negotiable matters pertaining to administrative procedures, department directives, and rules referenced in this agreement (including those that are part of any appendices) or are otherwise a mandatory subject of bargaining are subject to addition, change, amendment or modification, only after specific notice is provided to the other party with an opportunity to bargain, if both parties agree to bargain, and after the parties reach agreement. If no agreement is reached, the addition, change, amendment or modification shall not be implemented.

Section C. Changes to directives, rules and procedures involving the exercise of a management right. If the change, or a portion thereof, to the administrative procedure, department directive, or rule involves the effects on employees of the exercise of a management right as enumerated in Article 42 §A, it will be proposed by either party for bargaining. Thereafter, the parties shall engage in bargaining only over the effects of the exercise of employer rights in accordance with the Montgomery County Code.

Section D. Changes to directives, rules and procedures involving a procedural matter which is neither a mandatory subject of bargaining nor triggers bargaining over the effects of the exercise of employer rights. After transmittal of the administrative procedure, department directive, or rule to the FOP involving a procedural matter which is neither a mandatory subject of bargaining nor triggers bargaining over the effects of the exercise of employer rights, the Union shall notify the

employer of any comments for consideration by the employer, the Union has regarding the draft document within twenty-one (21) days. If the FOP does not respond, the employer shall follow-up in writing to the FOP.

Section E. In the event the FOP receives a draft administrative procedure, department directive, or rule and disagrees with the categorization applied by the employer, the FOP shall notify the employer within ten (10) business days. If the FOP does not respond, the employer shall follow-up in writing to the FOP. If the FOP does not respond within ten (10) business days of the follow-up, such failure to respond shall indicate agreement by the FOP to the categorization, but not the substance, of the administrative procedure, department directive, or rule. In the event the parties are unable to agree on the categorization of a directive, the matter may be resolved in accordance to the provisions of the Police Labor Relations Act (PLRA).

Section F. Conflict. If a provision of a regulation, departmental directive, rule or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. A copy of the preceding sentence will be placed on the first page of each departmental directive that is issued or reissued after July 1, 2003.

Section G. Presumption of Validity. It is presumed that any work rule, policy, directive, regulation, or procedure is valid unless challenged. If the validity of such a rule is challenged by the FOP, the County has the burden of establishing the validity of the rule in relation to the provisions of the Contract, the Police Labor Relations Law, and applicable State law. The County does not, however, have the burden of establishing the validity of work rules to which the FOP has expressly agreed or concurred.

Section H. LEOBR Hearing Board. When in an LEOBR administrative hearing board proceeding, a unit member asserts that a County work rule, policy, directive, regulation, or procedure is invalid or inapplicable because the rule conflicts with the Contract, the County agrees that its representative will inform the administrative hearing board that it is appropriate for the board to consider the validity of the rule in relation to the Contract, before the board applies the County's rule.

Figure 26. Article 61, Montgomery County FOP Collective Bargaining Agreement: Directives and Administrative Procedures

smaller employee associations to play a role in the budget-

making process and in personnel issues. Budget guidelines are received by all departments in August; the chief then convenes a committee of the different employee groups sharing the information and engaging in a discussion about the Fire and Rescue Department's proposed budget (Mastin, interview 2012). Since the Fairfax County Personnel Regulations apply to all county employees, Local 2068 actively represents members on personnel related grievances utilizing both the formal process as spelled out in the regulations and through meetings with department leadership (Ibid.; Bowers, interview 2014; Niemec, interview 2014). The current fire chief, having retired from Montgomery County and been hired by Fairfax, believes that the absence of formal bargaining compels the union to work on relationships with the board of supervisors and other key stakeholders. In areas of shared goals, such as safety, wellness, staffing, and community outreach, Local 2068 and the management of the department work as "colleagues" (Bowers, interview 2014). Echoing the comments of previous Fairfax County public safety officials, Bowers also commented that he has the management ability to promulgate a chief's order in "two seconds" without consulting the union; nor does he have to wait 30 days to implement such orders, as he was required to in Montgomery County. The

director of the Fairfax County Department of Human Resources summed up the difference between the two jurisdictions by asserting that in Fairfax County on the whole, "unions do not impact management decisions." (Woodruff, interview 2012a).

The IAFF Local 1964 collective bargaining agreement (CBA) in Montgomery County is over 120 pages and governs the day-to-day relationship between the rank-and-file firefighters and paramedics and the management of the department. Appendix VI contains the table of contents and, similar to the police agreement discussed above, is illustrative of the depth and scope of its influence in administering the department.

Employee Due Process Rights Granted by the Collective Bargaining Agreement

Article 30 of the IAFF collective bargaining agreement confers a number of due process rights to sworn employees of the Montgomery County Department of Fire and Rescue Services. The policy statement requires the application of progressive discipline, and requires management to take into account a number of mitigating factors including but not limited to: previous discipline, work record, the potential for rehabilitation, and the "clarity with which the employee was actually on notice of any rules,

regulations, directives, policies, orders, instructions, or the like that were violated in committing the offense” (IAFF and Montgomery County Government 2013, Section 30.1B(8)). Whenever DFRS management conducts an employee interview that may lead to disciplinary charges, the employee can request to have two IAFF designated representatives present. Management must issue a statement of charges (SOC), which outlines the discipline proposed as well as the incident or actions causing the action to be taken. Employees have 14 days to respond before any action can be taken. The CBA also gives the union the opportunity to ask for a pre-disciplinary settlement conference to attempt to work out a mutually satisfactory solution. As with police officers, IAFF Local 1619 has the right to copies of all statements and investigative files used to impose the proposed discipline (IAFF CBA 2012, Section 30.6 A). The union can appeal the proposed discipline to the county’s Office of Human Resources (OHR), and, if not satisfied with OHR’s resolution, can take the matter to arbitration by a neutral third party whose decision is final and binding on both sides (IAFF and Montgomery County Government 2013, Article 38).

Other provisions of the CBA

Section 2 of the CBA allows union stewards and officials access to employees at their worksites, and requires the DFRS to furnish and maintain a bulletin board at each fire station for Local 1664s exclusive use. The same section also calls for the department to provide a computer to the union with access to relevant personnel information for use by the Local:

Access to Fire/Rescue Operations Information. The County will provide to the Union a computer terminal with a communication line, monitor, and printer, which shall afford the Union continuous access to MCFRS Incident and Unit reporting system and Scheduling software. Such software shall be updated on the Union's terminal at the time that it is updated on the computers at MCFRS worksites. The President of the Union shall [have] administrative software rights to the scheduling software, to include access to employee schedules, work histories, and calendars (with the ability to run reports on these), but excluding the ability to affect any changes to an employee's work schedule or assignment. (IAFF and Montgomery County Government 2013, Article 2.9)

Unique to fire suppression service and, to a lesser extent, emergency medical service (EMS) providers is the utilization of the 24-hour day and the dual roles fire stations serve as a worksite and temporary home. The union, therefore, has the legal right to negotiate with the county and determine the equipment and supplies for employee personal use in each fire station. Here too, no detail is

so small as to not be considered, including the requirement that management provide cooking utensils, paper towels, and toilet paper:

Workplace provisions—the employer will supply, maintain and make available the following items in reasonable and sufficient quantities at each fire station; refrigerator, oven, microwave, dishwasher, two washers, two dryers, ice machine . . . facsimile machine, laundry supplies, eating and cooking utensils, and reasonable local telephone service, so long as these items were purchased with tax dollars. The Employer also agrees to use its "best efforts" to ensure that the following items are in sufficient supply at each station: laundry detergent, bleach, paper towels, soap (dish and hand), scouring pads and toilet paper [emphasis added]. Finally, the Employer agrees to maintain in each County-owned worksite a Heating, Ventilation and Air Conditioning (HVAC) system. Bargaining unit employees working at a worksite where workplace kitchen appliances are unavailable due to renovation shall receive the following per diem payments each shift (or portion thereof). Number of Hours Worked Per Shift Per Diem Per Shift:

0-4	\$ 0
5-12	\$15
13-18	\$20
19-24	\$35

Management's obligations regarding the above is further cemented by the footnotes contained for some of the items mentioned in the CBA:

11. As applied in this provision, the parties understand the term "maintain" to mean that the Employer will make reasonable efforts to ensure that the items referenced herein are kept in

working order and that, if an item referenced herein should fall into disrepair, the Employer will take necessary steps to ensure that the item is either repaired or replaced.

12. The ice machines at each fire station shall be of adequate size and of commercial quality, such that the ice machines are able to provide an adequate supply of ice for use in apparatus coolers.

13. The Employer agrees that it will make reasonable efforts to ensure that working HVAC systems are maintained at worksites not owned by the County to which bargaining unit employees of the Montgomery County Fire and Rescue Service are assigned. (IAFF and Montgomery County Government 2013, Article 22 F)

More significant in terms of management constraints is Section 22.2 of the IAFF CBA, the "notice and opportunity" portion requiring the Fire Chief to notify IAFF Local 1664 when promulgating any directives or administrative orders. While not as detailed as Article 61, the similar clause in the FOP contract, Section 22.2 does constrain management. It requires that Local 1664 IAFF be given advance copies of any changes in orders, directives, or policies. The union has 30 days to respond and if it believes that a particular proposal is negotiable, can submit counteroffers. The union may also demand to bargain past the 30-day window, delaying or modifying the change. If there is no agreement at the bargaining stage, the matter may be referred to impasse for resolution by a third-party, neutral arbitrator. If

A. Prior to the implementation of any new or revised Directive, MCFRS Bulletin, Policy, Procedure, Instruction relating to or affecting bargaining unit employees, the Employer shall provide the Union President, 1st Vice President, and 2nd Vice President with written, electronic notice and an opportunity to submit comments. If the Employer provides the Union with written, electronic notice and opportunity outside normal business hours (Monday through Friday, 7:00 am to 3:00pm), the electronically transmitted notices will be deemed received on the following business day. The employer will provide the Union written notice of its designee authorized to transmit documents for notice and opportunity.

B. Such written notice shall be addressed to the President of the Union, and shall be sent to him by regular and electronic mail. Such written notice shall include an explanation and/or description of the new or revised Directive, MCFRS Bulletin, Policy, Procedure or Instruction and the date on which the Employer intends to implement it.

C. The Union shall have thirty calendar days from the date upon which the President of the Union receives written notice to submit written comments or, if appropriate, proposals regarding the new or revised Directive, MCFRS Bulletin, Policy or Procedure or Instruction. During the thirty-day period, the Union may request to meet and confer with the Employer regarding the new or revised Directive, MCFRS Bulletin, Policy or Procedure or Instruction. The Employer will make all reasonable efforts to accommodate the Union's request to meet and confer. If the Union submits proposals on negotiable matters, the parties shall meet to discuss such proposals during and, if necessary, after the expiration of the thirty-day period.

The parties understand and agree that the term "Instruction" refers to: a) a written explanation provided by the Division Chiefs or the Fire Chief regarding the processes and/or procedures associated with the implementation of a new or revised Directive, Safety Bulletin, Policy or Procedure; or, b) written explanation/clarification provided by the Division Chiefs or the Fire Chief regarding an existing Directive, Safety Bulletin, Policy or Procedure that deviates from an established past practice.

Figure 27. Section 22.2, IAFF Collective Bargaining Agreement: Notice and Opportunity for Management Directives"

management believes that the proposed directive is not negotiable but Local 1664 believes otherwise, the issue can be referred to a third-party Labor Relations Administrator by either side for a binding determination under the Montgomery County Fire Collective Bargaining Law. Figure 27 contains the text of Section 22.2.

Impact of Collective Bargaining: Deputy Sheriffs and Correctional Officers

As indicated earlier in this dissertation, the Fairfax County sheriff's office performs both limited police functions and is responsible for the local detention facility. Of the 620 authorized positions, all but 100 are sworn personnel (Barry, interview 2013). The consensus among political and administrative leaders, including the immediate past Sheriff of Fairfax County, is that the deputy sheriffs—represented by the Deputy Sheriff's Association (DSA)—play a minor role in the politics and policy formulation of the jurisdiction. In terms of influence over departmental policies, the former sheriff followed the lead of other public safety directors by consulting with the DSA, but was not obligated to change, "While we pay attention to them, we are free to proceed In Montgomery County management is hobbled." (Barry, interview 2013).

Deputy Sheriffs and Correctional Officers, Montgomery

Local correctional and detention services in Montgomery are separated from the sheriff's department, but employees of both are represented by the same union: the Municipal and County Government Employees Organization (MCGEO) Local 1994, UFCWU. Similar to the collective bargaining agreements of the police, firefighter and paramedic unions, the MCGEO CBA is over 100 pages long and covers a multitude of topics. Appendix VII contains the MCGEO CBA table of contents, including separate sections dealing with deputy sheriffs and additional correctional officers.

Discipline for correctional officers and deputy sheriffs in Montgomery County is covered by Article 28 of the MCGEO CBA. The policy statement gives management the ability to impose discipline at any level, but also states that discipline should be progressive in nature and should be imposed only after, "consideration of the nature and gravity of the offense, its relationship to the employee's assigned duties and responsibilities, the employee's work record, and other relevant factors . . ." have been considered (MCGEO, UFCWU Local 1994 and Montgomery County Government 2013, Section 28.1). Before imposing any penalty, management must provide a statement of charges to

the employee outlining the proposed disciplinary action and give the employee 10 workdays to respond. Interviews by management that might lead to discipline must allow MCGEO representatives to be present upon employee request, and the union must be provided all documentation supporting the proposed disciplinary action (MCGEO, UFCWU Local 1994 and Montgomery County Government 2013. Articles 28.3, 28.6, 28.7). If the union disagrees with management's application of discipline it can file a grievance and ask the chief administrative officer (CAO) or his designee to conduct a hearing and issue a non-binding decision. MCGEO can also ask for a pre-disciplinary settlement conference whereby a mini-hearing is conducted and a non-binding decision is made. MCGEO may also appeal the discipline to a neutral, third-party arbitrator whose decision is final and binding on both sides (MCGEO, UFCWU Local 1994 and Montgomery County Government 2013, Articles 10, 11).

Other Provisions in the CBA

A reading and analysis of both Appendices shows the level of detail which management must follow in order not to violate the CBA. While there is no clause similar to the notice and opportunity section found in the IAFF and FOP contracts, the Local 1994 agreement does give the right to

negotiate to ameliorate the impact of any management decisions resulting in employee layoffs:

The Employer and the Union shall bargain over the amelioration of the effect on employees when the exercise of Employer rights listed in Section 2.1 causes a loss of existing jobs in the Unit. The Employer will provide the Union reasonable advance notice, 90 days when possible, prior to the date the Employer alters, combines, or abolishes any job classification, department, operation, unit, or other division or service causing a loss of existing jobs in the unit. Such notice shall identify the existing jobs affected and the reason for the Employer's action (MCGEO CBA 2012, Section 2).

The language covers the loss of all bargaining unit positions, not just filled or occupied jobs, and requires a minimum 90-day notification period. This clause, along with rulings by third-party labor relations administrators authorized under the County Labor Relations Act that required the county to bargain proposed changes in work hours and schedules, has given Local 1994 power similar to the FOP and IAFF. Local 1994 can, in effect, delay or defeat management directives and proposals related to department management which are viewed by the union as negative to their members.

Discussion and Analysis. An analysis of certain relevant portions of each union's collective bargaining agreement suggests a substantial impact in terms of employee due process, and limitations on the ability or

discretion of management to achieve workplace changes. Each of the three collective bargaining agreements in Montgomery County contain clauses with specific, detailed, and mandated steps management is required to undertake when applying discipline to an employee who is represented by a union. The section of the IAFF CBA concerning employee discipline, investigations, submitting a statement of charges, and the grievance process by which the union can challenge the employer's proposed action contains over 5,000 words. Similar provisions exist in the FOP and MCGEO contracts. Topping the employee due process safety net is the ability of all three unions to submit management's decision to a review and determination by an outside, neutral, arbiter whose decision is final and binding. These provisions are not unique to Montgomery County and can be found in a majority of public sector collective bargaining agreements. It is considered to be one of the boilerplate clauses sought by unions both in the public and private sectors. While IAFF Local 2068 in Fairfax County has a positive relationship with the fire chief who believes in cooperation rather than confrontation, a different chief may adopt a more management oriented philosophy and they may, "not be as effective", according to the President of Montgomery County IAFF Local 1964, "No matter who is on the

other side we have a third-party dispute resolution process . . . binding arbitration makes a difference" (Buddle, interview 2014). It also needs to be mentioned that the clauses constraining unilateral actions by management, cited here and contained in the various collective bargaining agreements, were agreed to by management, since the inclusion of any language in the contract requires the approval of both sides.⁸³ An exploration of the statutory framework establishing collective bargaining in Montgomery County, found in the next section, suggests that constraints on unilateral action by management both in the application of personnel actions and in the broader context of public administration is very much part of the collective bargaining environment.

Impact of Collective Bargaining Statutes

Moving beyond employee due process rights the final area of research is an analysis of the collective bargaining laws with respect to management's discretion and flexibility in administering their departments. All three labor relations laws in Montgomery County contain an exhaustive list of management rights. Figures 28, 29 and 30

⁸³Since all three collective bargaining laws have binding arbitration as the last step in negotiations impasses, it is also possible for contract language to be imposed by the arbitrator if s/he has to decide between the last best final offer of either the union or the county.

display the Police Labor Relations Act and the Fire Fighter Collective Bargaining Act and the County Collective Bargaining Act covering deputy sheriffs and correctional officers. A casual review of the above management rights'

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.

Figure 28. Employer Rights Section of the Montgomery County Code, Chapter 33. Article V Police Labor Relations Act

Employer rights. This Article and any collective bargaining agreement made under it must not impair the right and responsibility of the employer to:

- (1) determine the overall budget and mission of the employer and any agency of County government;
- (2) maintain and improve the efficiency and effectiveness of operations;
- (3) determine the services to be rendered and the operations to be performed;
- (4) determine the overall organizational structure, methods, processes, means, job classifications, and personnel by which operations are conducted, and the location of facilities;
- (5) direct and supervise employees;
- (6) hire, select, and establish the standards governing promotion of employees, and classify positions;
- (7) relieve employees from duties because of lack of work or funds, or when the employer determines continued work would be inefficient or nonproductive;
- (8) take actions to carry out the mission of government in emergency situations;
- (9) transfer, assign, and schedule employees;
- (10) determine the size, grades, and composition of the work force;
- (11) set standards of productivity and technology;
- (12) establish employee performance standards and evaluate employees, but evaluation procedures are subject to bargaining;
- (13) make and implement systems for awarding outstanding service increments, extraordinary performance awards, and other merit awards;
- (14) introduce new or improved technology, research, development, and services;
- (15) control and regulate the use of machinery, equipment, and other property and facilities of the employer, subject to subsection (a) (6);
- (16) maintain internal security standards;
- (17) create, alter, combine, contract out, or abolish any job classification, department, operation, unit, or other division or service, but the employer must not contract work which will displace employees unless it gives written

notice to the certified representative 90 days before signing the contract or other notice agreed by the parties;

(18) suspend, discharge, or otherwise discipline employees for cause, except that, subject to Charter Section 404, any such action may be subject to a grievance procedure included in a collective bargaining agreement; and

(19) issue and enforce rules, policies, and regulations necessary to carry out these and all other managerial functions which are not inconsistent with this Article, federal or State law, or the terms of a collective bargaining agreement.

(c) *Exemption.* This Article does not limit the discretion of the employer voluntarily to discuss with the representatives of its employees any matter concerning the employer's exercise of any right specified in this section. However, any matter so discussed is not subject to bargaining.

Figure 29. Employer Rights Section of the Montgomery County Code, Chapter 33. Article X Fire and Rescue Collective Bargaining Act

sections appears to indicate that a robust, if not forceful, enumeration of management prerogatives is enshrined in the Montgomery County collective bargaining laws. A closer examination of certain provisions of the labor laws, however, highlights the constraints imposed by statutory collective bargaining on unilateral actions taken by managers related to employee issues or concerns. The analysis will first look at the Police Labor Relations Law followed by the Fire and Rescue Law and the County Labor Law covering deputy sheriffs and correctional officers.

(c) *Employer rights.* This article and any agreement made under it shall not impair the right and responsibility of the employer to perform the following:

- (1) Determine the overall budget and mission of the employer and any agency of county government.
- (2) Maintain and improve the efficiency and effectiveness of operations.
- (3) Determine the services to be rendered and the operations to be performed.
- (4) Determine the overall organizational structure, methods, processes, means, job classifications, and personnel by which operations are to be conducted and the location of facilities.
- (5) Direct and supervise employees.
- (6) Hire, select, and establish the standards governing promotion of employees, and classify positions.
- (7) 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) Take actions to carry out the mission of government in situations of emergency.
- (9) Transfer, assign, and schedule employees.
- (10) Determine the size, grades, and composition of the work force.
- (11) Set the standards of productivity and technology.
- (12) Establish employee performance standards and evaluate employees, except that evaluation procedures shall be a subject for bargaining.
- (13) Make and implement systems for awarding outstanding service increments, extraordinary performance awards, and other merit awards.
- (14) Introduce new or improved technology, research, development, and services.
- (15) Control and regulate the use of machinery, equipment, and other property and facilities of the employer, subject to subsection (a) (6) of this section.
- (16) Maintain internal security standards.
- (17) Create, alter, combine, contract out, or abolish any job classification, department, operation, unit, or

other division or service, provided that no contracting of work which will displace employees may be undertaken by the employer unless ninety (90) days prior to signing the contract, or such other date of notice as agreed by parties, written notice has been given to the certified representative.

(18) Suspend, discharge, or otherwise discipline employees for cause, except that, subject to Charter section 404, any such action may be subject to the grievance procedure set forth in the collective bargaining agreement.

(19) Issue and enforce rules, policies, and regulations necessary to carry out these and all other managerial functions which are not inconsistent with this article, federal or state law, or the terms of the collective bargaining agreement.

(d) *Exemption.* This article shall not 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 rights set forth in this section. However, these matters shall not be subject to bargaining.

(e) *Agreement.* The public employer rights set forth in this section are to be considered a part of every agreement reached between the employer and an employee organization.

Figure 30. Employer Rights of the Montgomery County Collective Bargaining Law Section 33-107(c)

Police Labor Relations Law (PLRL) and Collective Bargaining

The Police Labor Relations Law (PLRL), enacted in 1982, was the first of three collective bargaining laws authorized by the Montgomery County Council (Rubin 2008, 45). Previously, Montgomery County police officers had a more informal process known as meet-and-confer, where the topics under discussion were limited and the final decision

was made by the chief administrative officer, subject to appeal to the Montgomery County Personnel Board (Rubin 2008, 40). In 1980, a group of police officers formed the Citizens for Effective Law Enforcement (CELE) and, along with Lodge 35 of the Fraternal Order of Police, were successful in having a ballot provision approved by the voters of Montgomery County calling on the county council to enact a collective bargaining law for police officers (Rubin; 42-45). The law requires last-best-final-offer (LBFO) interest arbitration when the county and the police union are unable to come to terms for a collective bargaining agreement. In such cases, the arbitrator must decide one side or the other's LBFO (Montgomery County Code, Police Labor Relations Act Section 33-81). Also created by the PLRL was the position of a "Permanent Umpire" to administer the process by which certification and decertification elections are held and to rule on questions of negotiability as well as handle charges from the union or management concerning allegations of engaging in a "prohibited practice" (Rubin; 70). The umpire is a part-time contractual position, appointed by the county executive and confirmed by the County Council for a term of five years (Ibid. 33-77).⁸⁴

⁸⁴In the private sector, these duties are handled by the National Labor

Unique to the police bargaining law, until 2012, was section 33-80(a)(7) requiring the department to negotiate over its exercise of management rights if it had effects on employees. The law also required management to notify the union of its intention to implement a management right and to bargain in good faith with the FOP before proceeding with implementation (Montgomery County Code, Police Labor Relations Act Section 33-81(2)). If no agreement was reached, either side may declare impasse, and the final decision would be made by a third-party arbitrator. Given that the vast majority of decisions involved in the daily and routine exercise of management rights have some effect on rank and file police officers, this clause gave the FOP tremendous leverage over departmental policies and administration. Police Chief Tom Manger claims that it made the union president equal to the chief (Manger, interview 2013). Has the repeal of effects bargaining restored the balance of power between police management and Lodge 35 of the Fraternal Order of Police? Or, does this research show that, with the elimination of section 33-80(a)(7), the

Relations Board, having jurisdiction over most labor management issues in the United States via enforcement and administration of the National Labor Relations Act (NLRA). Public sector is of course excluded from the NLRA, thereby allowing states and local governments the ability to establish their own administrative bodies. Jurisdictions with full-fledged negotiations usually opt to appoint a bilateral Public Employee Relations Board (PERB) structure, but given the absence of federal oversight state and local governments are able to create their own administrative bodies.

difference in management rights between Montgomery and Fairfax Counties public safety services has sufficiently narrowed so that the presence of statutory bargaining has become inconsequential? For the reasons and arguments cited below, the end of effects bargaining does not appear to have significantly moved the needle in favor of additional management power or discretion. Police Chief Manger, a strong proponent of removing effects bargaining, admitted that it was only a small setback for the union, as the union can still force collective bargaining over other issues and can vigorously grieve management's imposition of discipline no matter how justified (Manger, interview 2013). At the time the county council unanimously approved the elimination of effects bargaining, the FOP claimed that it was a "Pyrrhic victory" which would lead to, "more litigation over workplace issues not less" (FOP Montgomery County Lodge 35, 2011b). For exposition purposes, the following scenario is offered.

Management decides to issue a directive on when certain types of uniform can be worn and declares it to be within its right to do so, while the union believes such an order is a legitimate working condition issue. Management's refusal to bargain is considered to be a prohibited practice by the union, which brings the issue to the

Permanent Umpire who is authorized to investigate and resolve such issues. If the Umpire rules in favor of the union, the issue must be negotiated and the directive is on hold. This scenario can be played out numerous times so that even without effects bargaining, the FOP may claim that a proposed directive or change in policy is a safety and health or working condition and demand to bargain. Section 8 of the Police Labor Relations Law, allows management to make and enforce rules, but only if they are, "not inconsistent [with the PLRL] . . . or a **collective bargaining agreement**" (emphasis added). Even without adding the other provisions of the PLRL, this section sets limits on police management's discretion to make administrative and policy decisions.

Summary of PLRL and Its Impact

The Police Labor affects the police department by placing constraints on the ability of management to make unilateral decisions when the rank and file are involved. Until recently, the police union had an additional statutory right to contest almost all management decisions, so long as it could show an effect on represented police officers. The elimination of effects bargaining for police has not resulted in a significant shift towards management's rights, due to the fact that the Management

Rights clause of the PLRL already prevents management from taking actions that conflict with the Law, or the collective bargaining agreement. Additionally, the PLRL provides a mechanism for the union to demand bargaining if it believes that a particular proposed policy or action is a safety and health or working condition issue. The last word on whether such issues are legitimate topics for bargaining rests with a third party permanent umpire and not county officials.

Collective Bargaining Law for County Employees, including Deputy Sheriffs and Correctional Officers

The second collective bargaining law enacted by the Montgomery County Council covered deputy sheriffs, correctional officers and most nonpublic safety county employees. It was enacted in 1986, after the voters of Montgomery County approved a ballot question to amend the county charter in order to allow the council to enact such legislation (Rubin 2008, 76). Unlike the ballot measure for police bargaining, the ballot question did not mandate binding arbitration as the final step in resolving bargaining disputes; the original council enacted bill required mediation followed by fact-finding as the final impasse step (Rubin 2008, 92). In 2000, the county council

amended the county collective bargaining law and made last-best-offer binding arbitration the method for resolving bargaining impasses (Rubin 2008, 107). In many respects this law mirrored the Police Labor Relations Law, with marginal changes in terminology and impasse deadlines. One notable exception is the absence of the broad "effects bargaining" provision contained in the Police legislation.⁸⁵ Instead, a narrower provision—Section 33-107(a)(7)—was enacted which allows the union to bargain over the amelioration of the effects of a management decision when it results in a loss of jobs in the bargaining unit. The management rights section in the County Collective Bargaining Law (CCBL) is more expansive, covering 19 clauses, but it too contains the caveat that management is able to issue rules and regulations to enforce its rights and prerogatives only if they are **"not inconsistent with this article, federal or state law, or the terms of the collective bargaining agreement"** (MCCBL Section 33-106(c) 19, emphasis added). Similar to the PLRL, the County CBL also contains provisions for a third party part time official, called the Labor Relations Administrator (LRA) to

⁸⁵At the drafting stage of the County Collective Bargaining Law, the issue of full effects bargaining for County employees similar to the Policed Law was raised by MCGEO, and opposed by the County Executive on the grounds that management did not realize its full impact when the Police legislation was enacted (Rubin, p.88).

administer the law. The LRA is appointed by the county executive and confirmed by the County Council for a term of five years, and has significant authority over the course of labor-employee relations between the County and its employees, including deputy sheriffs and correctional officers. Especially germane to this research study is the LRA's power, outlined in Section 33-103(a)(5)(8)), to conduct hearings and render a decision when a prohibited practice charge is made or to determine the negotiability of a particular topic or subject. Again the following hypothetical scenario is offered.

For budgetary reasons, the management of the Department of Correction and Rehabilitation Services decides to transfer uniformed correctional officers from a facility in Rockville—near public transportation and within easy commuting distance for the officers—to a facility 20 miles further north, with no public transportation options and longer commute. For almost all of the officers, the decision reduces the amount of time available to spend with family and also increases the cost after school child care and other expenses. It would appear that this action, though not welcomed by the employees or their union, could prevail since Section 33-107(c)(9) of the County CBL gives management the specific right to assign, schedule and

transfer employees. Such management optimism would be short-lived. The union can file a prohibited practice charge with the LRA, claiming that management's action violates Section 33-106(c)(19) given that the collective bargaining agreement requires a minimum 30-day notice, and allows employees to plead for an exemption based on hardship (MCGEO CBA Section 22.4). In similar instances LRAs have opined that the county should negotiate almost all such actions prior to implementation, regardless of their belief that it impinges on a perceived management's right. An attempt in 1999 by County Executive Duncan to modify the LRA's authority by adding language that the administrator "must not diminish, restrict, or place conditions on the employer rights in Section in 107(b) . . . " when a union proposal is declared negotiable, was not enacted by the county council (Rubin 2008, 112).

Summary of MCCBL (Deputy Sheriffs and Correctional Officers and its impact

Perhaps due to the experience gained by collective bargaining with the FOP, the MCCBL's list of inviolate management rights is more than double that of the Police CBL, (8 and 19 respectively) and the county law limits effects bargaining only when there is a potential loss of jobs. In other areas, the effect on management being able

to take unilateral action is similar to the police law. The management rights section is circumscribed to actions taken in conformance with the collective bargaining law and agreement; the latter also runs over 100 pages and regulates most of the day-to-day interactions between managers and represented employees. MCCBL also makes safety and health and working conditions mandatory subjects of bargaining and the refusal to bargain is a prohibited practice, subject to the determination of the Labor Relations Administrator who has the authority to make employees whole if a violation is found (Section 133-109(d)). Historically LRAs have tended to take a broad view on issues of negotiability and a narrow view of what actions management can undertake without union involvement. As is the case with police, none of the limits on management with respect to personnel actions and policy determinations are possible without the presence of a statute promoting collective bargaining.

Fire and Rescue Service and Collective Bargaining Law

In October 1987, the Montgomery County Council enacted legislation to transfer paid career firefighters from independent volunteer corporations into the county's merit system; a month later an emergency bill was enacted to

create a separate firefighters' unit within the County Collective Bargaining Law (Rubin 2008, 114). In 1994, a group of firefighters was successful in placing a referendum on the ballot calling for the creation of a firefighter bargaining law with binding interest arbitration. The referendum was approved by the voters of Montgomery County and, in 1996, the Council enacted the Fire and Rescue Collective Bargaining Law (Rubin 2008, 117). Following the template set by the PLR and the MCCBL, the Fire and Rescue Collective Bargaining Law (FRSCBL) contains all of the clauses and provisions found in a comprehensive bargaining legislation. Relevant to this research is the employer rights section with 19 clauses including the caveat that any rule or action taken by management must be consistent with the bargaining law and the collective bargaining agreement (IAFF 2013, Section 33-152(b)(19)). Mandatory subjects for bargaining include wages, hours, pensions, benefits, working conditions, health and safety, grievance administration, and the same limited effects bargaining found in the MCCBL (33-152(a)(7)). The official position of Labor Relations Administrator was created on the same basis as the other bargaining laws and given the authority to adjudicate charges of prohibited practices and determine questions of

bargainability (IAFF 2013, Section 33-154(e)). For illustrative purposes, the following hypothetical scenario is offered.

Management of the Fire and Rescue Service decides to transfer bargaining unit firefighters from a station which receives a low volume of calls to one that sees a high volume of calls for service due to efficiency and service capacity concerns; this action would fall under the portion of the Fire Collective Bargaining Law that states that management has the right to transfer, assign and schedule employees. IAFF objects protesting that the union and employees were not properly notified, and that FRS did not follow the provisions of the CBA concerning transfers. In this scenario, the union can file a prohibited practice charge with the LRA or a grievance claiming that the CBA was not followed. Section 28 of the IAFF CBA requires a notice, giving the reason for the transfer, a minimum of two weeks before bargaining unit employees can be re-assigned. Employees have seven days to reply if they object, and the Chief must consider the objection before the transfer is final. The practical effect of this process is to delay the transfer by one month or longer if the union files a grievance.

Examples of Determinations by Labor Relations Administrators

In 1999, the County sought to expand the probationary period for new hires without bargaining. The union filed a prohibited practice charge (PPC) with the Labor Relations Administrators (LRA) who rejected the county's position that the probationary period is part of the hiring process and, therefore, a management right. In 2001, the FOP sought to bargain over procedures and processes utilized by the county to promote officers out of the bargaining unit, and the permanent umpire rejected the county's non-negotiability argument. In 2005, the union representing general government employees (including correctional officers and deputy sheriffs) made a bargaining proposal to limit the county's ability to hire at market rates if the salary of the new employee is higher than existing employees, without adjusting the salaries of the current employees. The county believed that the proposal impaired management's ability to hire the best available candidate and refused to bargain. A prohibited practice charge was filed by the union and the LRA ruled against the County, citing an earlier LRA decision that, **"Any element of the employment relationship is subject to negotiations unless the law clearly and unequivocally exempts it from**

bargaining . . . " (Strongin 2005, 17; emphasis added). During the same year, the LRA issued another opinion against the county when it unilaterally decreased the number of 10-hour days due to efficiency concerns. The LRA opined that the collective bargaining law did not prohibit agreements that marginally impact management rights, only those that significantly impair those rights. In 2005, the county sought to unilaterally implement a memorandum of agreement (MOA) with the U.S. Department of Justice concerning traffic stop enforcement, but agreed to bargain the effects of the MOA. The FOP argued that the MOA itself was bargainable and filed a prohibited practice charge with the permanent umpire. The umpire sided with the FOP, stating that the union had a legitimate interest in determining if the data collected for the Justice Department would also be used in police personnel matters. Similar negotiability arguments made by the county about changing the unpaid furlough and reduction of force procedures were also rejected by the LRA (Strongin 2010). An analysis of LRA or permanent umpire decisions made from 2000 to 2014 by the Montgomery County Office of the County Attorney found that they rejected the county's position on bargainability and management prerogatives in eight out of ten cases.

Is the phenomenon described above unique to one jurisdiction (Montgomery County) or emblematic of most local governments which adopt collective bargaining? The literature suggests that the management rights conundrum is imbedded in public sector collective bargaining. Wellington and Winter (1969, 1107) argued that the dynamics of the public sector make it all but impossible to create an inviolable list of management rights, "it is difficult . . . for any governmental institution to make judgments about the issues that should be included in the non-bargainable class. The courts are badly suited to this task; and the legislature is not well constituted to come in after the fact and effect a change." Once the public policy decision is made to move from unilateral decision making by public managers to bilateral decision making by management and labor, the policy shift is far more than incremental. It creates a permanent ongoing disagreement over the proper role of each side; management would like to keep the bargaining scope as narrow as possible, while unions are constantly seeking to expand their reach, "Management rights clauses are usually replicated in contracts, but determining what they mean in specific cases is often the responsibility of the labor relations agency." (Nigro et

al. 2007, 216). Kearney finds that disputes over management rights are the norm:

unions insist on having a voice regarding the effects of decisions in proscribed areas. While more than 90 percent of local governments with collective bargaining have written management rights clauses in at least one of their collective bargaining agreements, in reality they are constantly being encroached by unions . . . one thing is certain: managing in a union environment is more difficult and complicated than managing in a union-free setting. (Kearney 2009, 196)

Kearney (2009, 217) also states that the contention between management and labor is a part of the public sector collective bargaining landscape, "as unions seek to extend their sphere of influence and limit management authority. Unions want greater control of the workplace for their members, and they work hard, and often successfully, to get it." In assessing the impact of collective bargaining in the public sector concerning managerial discretion, Dresang (2009, 329) observes that it has made decision making more complex since managers need to be aware of the collective bargaining agreement so that they do not violate its provisions and cause a grievance to be filed, "Whereas supervisors had been able to make decisions on their own . . . they now have to consult, formally and informally, with union officials." Berman et al. (2006) noted that questions

concerning the scope of bargaining are a source of contention in the public sector. Unions want more to argue over, while management wants to preserve its prerogatives and tends to take a narrow view of what is negotiable adding that ambiguous legal language, "frequently specifying the scope to include 'wages, hours and conditions of employment' fuels the debate over the legitimate array of discussable items" (Berman *et al.* 2006, 294). Nor is the contention over management prerogatives a recent phenomenon in public administration. Pynes, (1993) studied the scope of bargaining decisions made by the courts and administrative bodies such as public employment labor relations boards and found that there is an ongoing tension between management rights and mandatory subjects of bargaining due to rulings which expand the scope of bargaining. "This serves notice to public employers that unless there is specific legislation . . . prohibiting certain subjects from bargaining, topics that they consider to be permissive may be held to be mandatory by an adjudicative body . . . " (Pynes, 1993; 442).

Arthur Spengler (a former director of the Montgomery County Office of Management and Budget) traced the development and impact of collective bargaining in Montgomery County through 1997 and found agreement among

all parties that the most substantial gains made by unions were in the non-economic area at the perceived expense of management. A majority of upper level managers in Montgomery County felt that their flexibility diminished under labor contracts: "[the unions] are able to reduce management prerogatives, and thereby attain their many of their governmental objectives . . . The unions now have too much of a policy role . . . Management rights have been eroded a little bit in each contract . . . How far will it go?"(Spengler 1999, 193) Spengler noted that few of the top officials had a response to the last question (Ibid). Spengler's research also showed that non-economic interests were of paramount concern to unions; working conditions were important to public safety employees, while job security and greater involvement in decision making also stood out as priority topics for unionized employees (Ibid., 194-197). Union leaders in Montgomery County today echo these findings and believe that they have an obligation to represent members beyond economics. The president of the Montgomery County Professional Firefighters, IAFF Local 1664 stated that workplace issues are as important as economics. He believes that statutory collective bargaining ensures the union has a seat at the table, regardless of the philosophy of whoever is in

authority (Buddle, interview 2014). FOP Lodge 35's history on its website states that it is in a, "constant battle with the county government to eliminate hurdles that impede our members' efforts to more effectively serve people."

Summary and Analysis

A review of the various Montgomery County statutes authorizing collective bargaining and the resultant collective bargaining agreements demonstrates the value of unions to their members in the areas of due process and limiting management actions. All three bargaining agreements contain detailed and specific language on issues of concern to employees. The bargaining laws themselves make it clear that the duly elected bargaining agent is entitled to certain rights and privileges at the workplace, and that management must consult with them prior to taking action. A system of permanent umpires or labor relations administrators enforce the collective bargaining statutes, and possess the authority to declare whether a particular policy or action can be implemented, or must first be negotiated with the appropriate union. These neutral referees are professional mediators and arbitrators, who support the concept of bilateral discussions and will back management's contention of non-negotiability only if union involvement would severely compromise the ability to manage

the enterprise. This fact mitigates against unilateral management decision. Thus, while the impact of bargaining on economic issues and other benefits may not always produce robust results, the impact on employee rights and management actions is clearly manifested by collective bargaining statutes, contracts, and contract administration.

The above finding does not imply that public managers are infallible in their decision making, or that unions are obstructionists in their role as exclusive representatives of employees. It does suggest, however, that statutory collective bargaining alters the employer-employee relationship, and that unions acquire certain rights to represent their members in the workplace—including due process rights, and in decisions deemed to affect employees negatively. Some of the contention over actions in the workplace arise when there is a poor relationship between the two sides, or a lack of understanding and appreciation by managers of the obligation of unions to fairly represent all employees covered by the collective bargaining agreement.

CHAPTER 7

SUMMARY OF FINDINGS AND SUGGESTIONS FOR ADDITIONAL RESEARCH

Revisiting the research question

As indicated in Chapter 1, this dissertation compares two demographically similar local governments, Montgomery County, Maryland, and Fairfax County, Virginia, the former legally mandated employee collective bargaining and the latter with a legal prohibition of the same. It is the intent of this dissertation to determine the impact of collective bargaining on such variables as wages, health benefits, leave policies, and pensions. Analysis of relevant documents such as salary plans, health insurance offerings, pension statutes, employee handbooks, and collective bargaining laws and agreements are utilized along with in-person interviews of key stakeholders in both jurisdictions. This chapter seeks to summarize the data and the analysis on the research question: *What is the impact of statutory collective bargaining on local government?*

Salaries, Wages, and Fringe Benefits

Based on a comparative case study of Montgomery and Fairfax Counties analyzing a number of economic

variables, including general cost of living raises, starting salary increases, and progression along the pay grid, the data suggest that the presence of a collective bargaining statute does not consistently result in outsized economic benefits for union members. From 2004 to 2014, unionized Montgomery County police officers received raises totaling 24.35 percent, while nonunion Fairfax police received 26.46 percent, for an aggregate difference of 2.41 percent favoring Fairfax County police officers. During the same time period, Montgomery County firefighters received raises totaling 27.25 percent, while nonunion Fairfax County firefighters received 32.73 percent, for an aggregate difference of 4.98 percent favoring Fairfax County. From 2004 to 2014, Montgomery County deputy sheriffs and correctional officers received raises totaling 24.25 percent, while their non-unionized counterparts in Fairfax County received a 22.46 percent increase, a difference of 1.79 favoring Montgomery County.

Similar results were found for entry level salaries. The starting salary for Montgomery County police increased by 24.45 percent from 2004 to 2014, while Fairfax County's starting police salary went up by

25.26 percent, a difference of 0.81 percent favoring Fairfax County. Montgomery County firefighters fared slightly better; their starting salary increased by 35.95 percent as compared to Fairfax County's 34.63 percent, for a difference of 1.32 percent. Unionized deputy sheriff's starting salary increased by 24.52 percent between 2004 and 2014, while Fairfax County deputy sheriff's entry salary increased by 21.65 percent, favoring Montgomery County by nearly three percent. Montgomery County correctional officers received a significant increase as a result of a union initiated proposal to create a separate pay plan for them; their starting salary jumped by 38.07 percent, versus Fairfax County's increase of 21.65 percent, a gain for Montgomery County of 16.42 percent from 2004 to 2014.

The research findings suggest that the effect of unionization on wages found by other researchers for police officers and firefighters is only manifested in Montgomery County at the upper end of pay scale that is, for employees with substantial seniority or longevity. The data presented in Chapter 4 demonstrate that salaries for Montgomery County public safety employees after 20 years of service are higher than

for similarly situated Fairfax County employees. A police sergeant earns 11.25 percent more, a fire lieutenant earns 4.60 percent more, a deputy sheriff sergeant earns 3.37 percent more, and a correctional sergeant in Montgomery County earns 0.71 percent more than a deputy sheriff sergeant in Fairfax. These differences are due to the longevity steps negotiated by all three unions in Montgomery County. Each pay plan contains increments or steps generally valued at 3.5 percent per step, per year of service, up to 15 years. Once an employee has reached the top step, no increments are given, only the general wage adjustment. Montgomery County police officers, deputy sheriffs, and correctional officers have an additional step, called a longevity step after 20 years of service. By contrast the pay plans of Fairfax County contain eleven steps, with no additional increments available for service beyond 20 years. In the case of firefighters, the influence of the union on longevity steps is even more significant. Montgomery County firefighters represented by Local 1664 IAFF enjoy a 15-step pay plan with two longevity steps.

The presence of statutory collective bargaining also demonstrates a slight advantage in employer provided health

benefits. Montgomery County public safety employees can negotiate health benefits coverage and have the added flexibility of separating prescription benefits from the overall plan, enabling them to pay somewhat lower premiums. As a result, medical health insurance premiums for public safety employees in Fairfax County are \$1,000 to \$1,600 higher per year, despite the fact that both jurisdictions peg the employee premium share at 25 percent.

The data also suggests a moderate effect of statutory collective bargaining on leave policies. Police officers represented by Montgomery County FOP Lodge 35 enjoy 2.5 more days of annual leave up to 15 years of service and also receive two additional days of sick leave annually regardless of years of service. Moreover, the collective bargaining agreement (CBA) also entitles FOP members to accumulate and carry over 10 additional days of leave from the beginning of their careers, while Fairfax County police officers have to wait until the completion of ten years of service. Fairfax does grant 4.5 additional paid holidays over Montgomery County, but this is mostly offset by the four days of personal leave granted by the FOP CBA. Montgomery County firefighter and EMS personnel represented by the Local 1664 CBA also have more annual and sick leave days granted than their non-union counterparts in Fairfax

County. In terms of leave accumulation, the CBA lags behind Fairfax County by four days throughout their careers; the additional paid holidays granted by Fairfax are offset by the 3-6 days of personal leave provided by the CBA. For deputy sheriffs and correctional officers represented by MCGEO Local 1994, the collective bargaining agreement provides a gain of 2.5 annual leave days for the first 15 days of service and 2 additional sick leave days annually throughout their careers. Fairfax, though, does allow ten more carryover annual leave days after ten years of service, and the additional 4.5 paid holidays is only partially offset by the three days of personal leave granted to Montgomery County deputy sheriffs and correctional officers.

Despite the fact that the Montgomery County collective bargaining statutes make pension benefits a mandatory subject of collective bargaining, the data argue against a positive union impact on retirement benefits. Public safety employees in Fairfax County retiring after 25 years receive a pension that is 20 percent higher, (over \$10,000 per year) than the payments received by Montgomery County public safety employees. Upon reaching Social Security eligibility for normal retirement, the differential jumps to over 50 percent in favor of Fairfax County police

officers and over 60 percent for Fairfax County firefighters, correctional officers and deputy sheriffs.

Public Administration and Public Policy Issues

Prior to the advent of statutory collective bargaining for public safety employees, political lobbying and involvement in public elections were the accepted methods for unions to seek gains for their members. Analysis of data for this dissertation strongly suggests that political activity continues to be utilized in non-bargaining jurisdictions, and has not been abandoned by unions in jurisdictions with statutory collective bargaining. From 2001 to 2012 public sector unions in Virginia spent over \$7.7 million in direct campaign contributions, while Maryland's public sector unions spent over \$7.4 million. Narrowing the data to donations made by Fairfax County unions and associations for the board of supervisor elections shows that unions contributed nearly \$459,000. The largest aggregate contribution, \$290,117 was made by Local 2068 of the International Association of Fire Fighters, followed by the Service Employees International Union (SEIU) with nearly \$90,000, mirroring the emphasis placed on political activity by their national unions in Washington DC.

Unions in Montgomery County also invest in state and local political campaigns. From 2005-2013, the three unions representing public safety personnel contributed slightly over one million dollars in statewide and local campaigns, including \$239,253 to races for the Montgomery County Council. The largest contribution was made by Local 1994 UFCW, representing over 6,000 county employees including correctional officers and deputy sheriffs; the second largest donation \$96,253 was made by IAFF Local 1664, representing 1,100 members.

Does the addition of statutory collective bargaining rights to political activity by unions lead to the condition theorized by Wellington and Winter that is, unions crowding out the broader public interest in favor of narrower concerns? Or the alarm expressed by McGinnis and Schazenbach (2010, 7, 8) that, "public employee unions . . . possess war chests from which they can contribute to politicians who support their goals . . . [which] gives them uniquely powerful and damaging leverage in the political process." Or the assessment by a New York Times columnist that, "union lobbying power can bias public-policy decisions toward the interests of [public] employees." (Douthat 2015). The findings of this case study suggest that robust political activity and the presence of

collective bargaining does not guarantee unions' desired results. Despite their hefty political contributions and strong labor-oriented collective bargaining statute, coupled with a local legislative body comprised entirely of Democrats, unions in Montgomery County were not able to defeat unilateral proposals to change the public safety disability pension program, nor the county council's mandated increase in employee contributions for health insurance. Additionally, the loss of effects bargaining for police officers was especially significant since it was part of the Police Bargaining Law from its inception in 1980. Research findings also indicate that union lobbying and political activity can obtain favorable results even in jurisdictions where collective bargaining is prohibited. Unions in Fairfax County were able to defeat an attempt to reduce their retirement and pension benefits. They were able to reverse a proposal by the county executive to grant market-based adjustments and movement on the salary schedule every other year, too.

Employee Due Process and Management Flexibility Issues

Focusing on management flexibility and employee due process issues, the research indicates that both jurisdictions attribute basic due process protections to

their public safety employees. Employee associations or unions in Fairfax can and do contest management actions they deem to be unfair or a violation of due process. The presence of a collective bargaining agreement, however, provides unionized Montgomery County public safety employees an additional layer of rights to contest management actions. Each of the three union collective bargaining agreements in Montgomery County contain clauses with specific, detailed, and mandated steps which management is required undertake when applying discipline to an employee who is represented by a union. The section of the IAFF CBA concerning employee discipline investigations, submission of a statement of charges, and the grievance process by which the union can challenge the employer's proposed action contains over 5,000 words. Similar provisions exist in the FOP and MCGEO contracts. Topping the employee due process safety net is the ability of all three unions to submit management's decision to a review and final determination by an outside neutral whose decision is final and binding. These provisions are not unique to Montgomery County and can be found in a majority of public sector collective bargaining agreements. It is considered to be one of the basic clauses sought by unions both in the public and private sectors. Collective

bargaining agreements also spell out, in great detail, the actions public safety managers must follow in areas such as promotions, transfers, schedule changes, and other routine managerial duties. Indeed, as illustrated in the IAFF Local 1964 agreement, Montgomery County is contractually required to maintain an adequate supply of detergent, paper towels, toilet paper, and a host of other supplies in each fire station. Other public safety contracts have similar provisions, a phenomenon that does not exist in Fairfax County.

A review of the various Montgomery County statutes authorizing collective bargaining and the resultant collective bargaining agreements point to significant constraints on the ability of management to make unilateral decisions. All three bargaining agreements contain detailed and specific language on issues of concern to employees. The bargaining laws themselves make it clear that the duly elected bargaining agent is entitled to certain rights and privileges at the workplace, and management must consult with them prior to taking action. While each of the three Montgomery County collective bargaining laws contains a list of management rights, they must be exercised in conformance with the collective bargaining agreements. A permanent umpire or labor relations administrator enforces

the collective bargaining statutes. These outside neutrals—who make their living as professional mediators and arbitrators and whose professional ethos tend to encourage labor management dialogues—have the legal authority to declare whether a particular policy or action can be unilaterally implemented, or if it must first be negotiated with the appropriate union. While management is not compelled to grant a union demand, neither is it free to ignore the proposed request; it must bargain these demands in good faith once the determination is made that they are negotiable. Thus, the line between what management believes is within its sphere of influence and what unions insist is a working condition is constantly shifting.

Additional Topics for Further Research

The introduction of this dissertation discusses the effort by elected conservative state government leaders to weaken and eliminate the presence of unions in state and local governments in the United States. Wisconsin is cited as the most successful state government in this effort due to the magnitude of the restrictions imposed on unions: collective bargaining is limited to base salaries only and any agreement cannot exceed the rate of inflation. Unions in Wisconsin must recertify each year, meaning that if they

want to represent employees they must win an absolute majority of the employees in the bargaining unit. Wisconsin also prohibited the collection of dues through payroll deduction; rather, unions must collect from each member. Not surprisingly, these changes have negatively affected public sector unions in the Wisconsin. One AFSCME local went from a membership of 1,000+ in 2009, to 122 in 2014. Also, due to the expense of elections, a number of other unions decided to not seek recertification votes, thereby ceasing to exist as bargaining agents and limiting their services to representing members in grievances (Greenhouse 2014). Union leaders complain that the changes have made it difficult to show the value of union membership to public employees (Ibid.). Has the effort started by Wisconsin and emulated by other jurisdictions in various configurations led to a substantial aggregate decline of union membership in state and local governments? Union membership data for the year ending in 2014 (detailed further in the next several pages) indicates a slight decline in public sector union membership, but not the inexorable downward trajectory experienced by unions in the private sector.

Data spanning both the great recession and the political efforts by some states to roll back existing public sector bargaining laws was collected by the U.S.

Department of Labor, Bureau of Labor Statistics (BLS) for the years 2004-2014 (see Table 31 and Figure 31a-31c below). It indicates that private sector union membership continued to decline both in actual numbers and as percentage of the labor force. In 2004, there were 102,648,000 private sector workers of whom 8,205,000 or nearly 8 percent were union members. By 2014, private sector employment increased to 111,228 million of whom only 7,359 million or 6.6 percent were union members. Thus while total private sector employment went up by 8.5 million workers, unions lost over eight hundred thousand members during the same time period.⁸⁶ Union penetration of local government employment saw a decline in actual numbers too, but a slender gain in the percentage of union members. In 2004, there were nearly 11 million local government employees, of whom slightly over five million or 41.4 percent were union members. By 2009, the actual number of local government employees increased by 417,000 to 11,244 million. Union membership decreased by 15,000, but gained as a percentage of the total from 41.3 percent to 43.3 percent. Data for 2014 shows an additional decline in the number of local government employees by 892,000 to 10,352 million. The number of union members declined as well from

⁸⁶ ⁸⁶In order to maintain the 7.9 percentage of the private sector workforce in 2014, unions would need to have 8,787 million members

4,867 million to 4,412 million, or slightly over half of the total number of lost positions. At the same time, the percentage of local government employees who are union members declined to 41.9 percent, a loss of 1.4 percent from 2009, but a small gain of 0.6 percent over the 2004 rate.

State government employment and union membership data for 2004 to 2014 indicate a slight negative trend from 2004 to 2014. In 2004 there were 5,636 million state employees, of whom 1,751 million, or 30.7 percent, were union members.

Year	Private Sector (000) percent		State Government (000) percent		Local Government (000) percent	
	2004 union members	8,205	7.9%	1,751	30.7%	5,017
Total employees	102,648	5,636		10,827		
2009 union members	7,431	7.2%	2,025	32.2%	4,867	43.3%
Total employees	103,357		6,294		11,244	
2014 union members	7,359	6.6%	1,867	29.8%	4,412	41.9%
Total employees	111,228		6,264		10,352	

Table 31. Union Memberships in Private Sector, State Government and Local Government, Selected Years. Data derived from *BLS Economic News Release 2004, 2009, 2014 Table 3*.

By 2009, the total number of state employees rose to 6,294 million of whom 2,025 million, or 32.2 percent, were union members. In 2014, the total number of state employees declined slightly by 30,000 workers to 6,264 million employees. The number of union members also declined by 158,000 to 1,867 million, or 29.8 percent of the workforce. Comparing 2004 to 2014 indicates that the number of state employees increased by 628,000, or 11.14 percent, and union membership during the same time period grew by 116,000. Nevertheless, as a percentage of the workforce, there was a slight decline of state employee union penetration by 0.9 percent, from 30.7 percent to 29.8 percent.

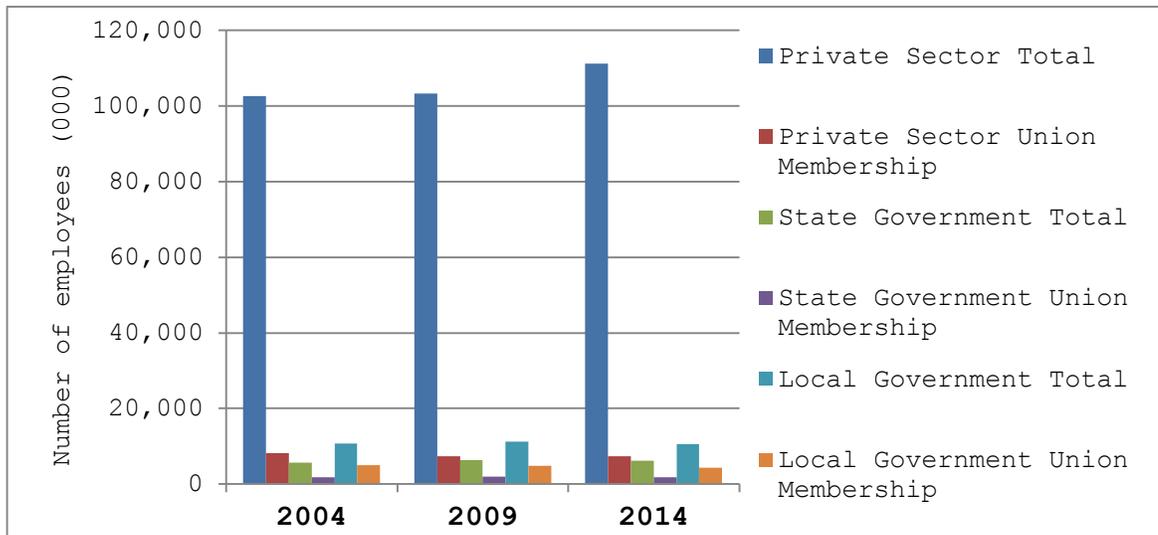


Figure 31a. Union Memberships in Private Sector, State Government and Local Government, Selected Years

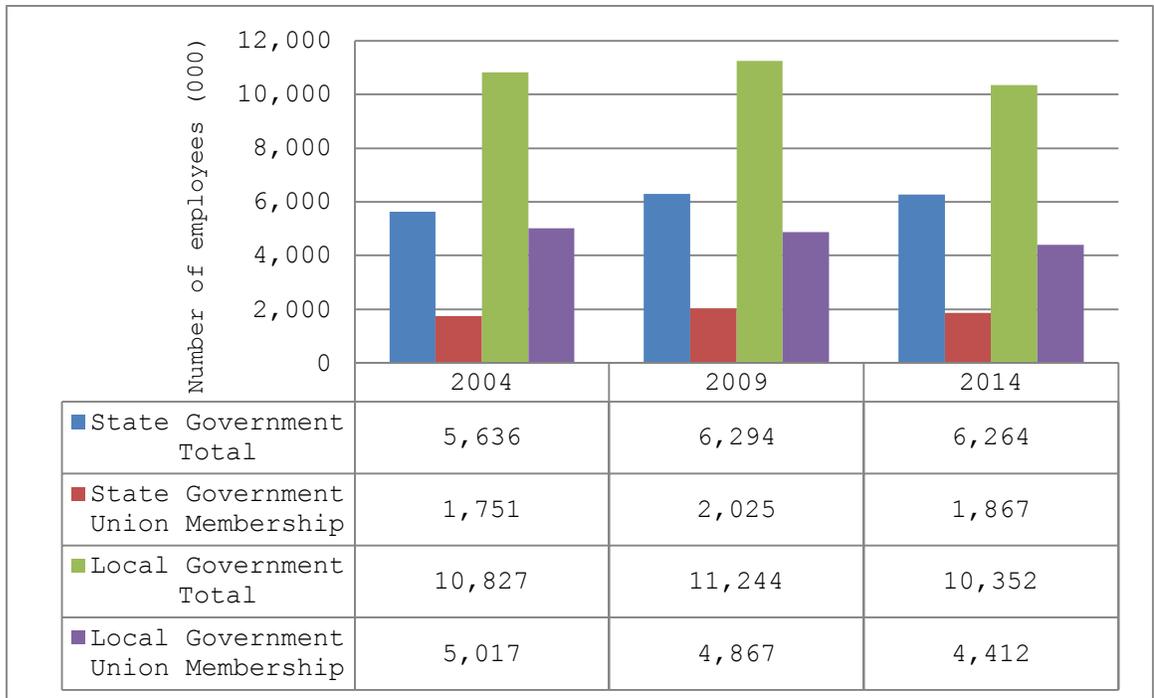


Figure 31b. Union Memberships in State Government and Local Government Only, Selected Years

Is the data indicating a temporary decline for public sector unions, similar to the setbacks of the late 1970s and 1990s, or the beginning of a gradual waning of power and influence, similar to the trajectory taken by private sector unions? A breakdown of union membership by each state for the years 2004, 2009, and 2014 (BLS Economic News Release 2004, Table 5; 2009, Table 5; 2014, Table 5) reveals that Wisconsin had a 16 percent union penetration in 2004, which decreased slightly to 15.2 percent in 2009, then declined to 11.7 percent in 2014, perhaps indicating that the decline for all union members, including public

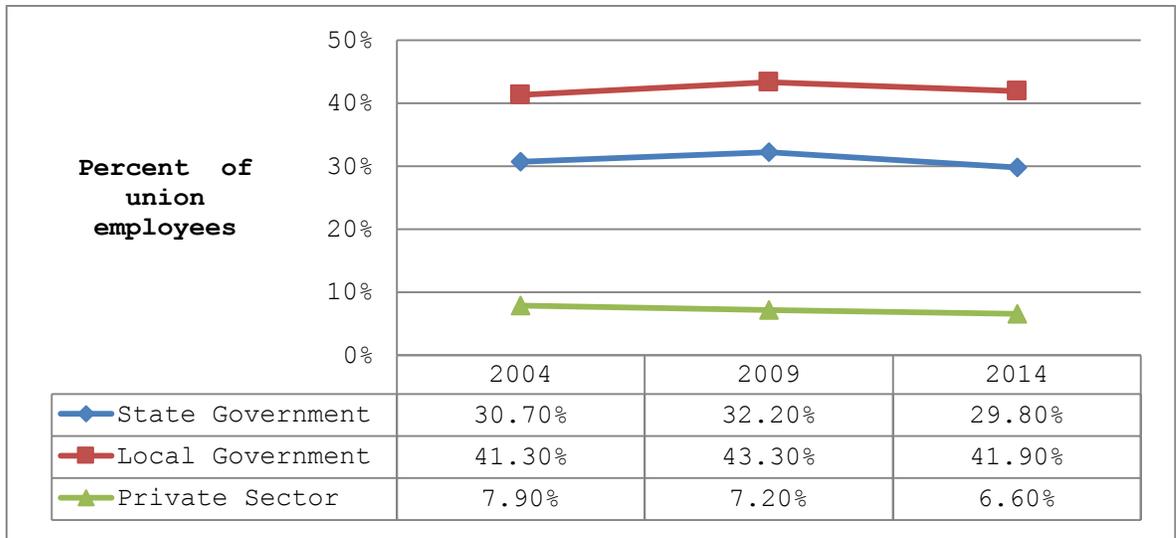


Figure 31c. Union Membership by State and Local Government and Private Sector (linear comparison)

sector will continue. By way of comparison, during the same time period, Maryland's union penetration rate went from 10.9 percent of all workers in 2004, up to 12.9 percent in 2008, and then down to 11.9 percent in 2014 (BLS Economic News Release, 2004, 2009, 2014, Table 5). Thus, Wisconsin's 2014 union percentage rate of 11.7 percent is only 0.2 percent lower than Maryland's 11.9 percent, despite the fact that Maryland is not hostile to either public or private sector collective bargaining. Additional longitudinal research, bifurcated by public and private sector employment union membership rates for major states and local governments, is needed to determine if indeed the decline is temporary, cyclical, or permanent.

An unexplored, related area which is a prime subject for follow up research concerns the relative standings of public and private sector unions and the sustainability of continued economic gains by government employees. Gaps in wages between the two sectors have narrowed, and many of the other benefits enjoyed by public employees such as robust health insurance and defined benefit pension plans (ironically, modeled after the private sector) have declined, if not become totally extinguished in the private sector. Unions in the public sector will continue to advocate for their members and will resist attempts to reduce or not expand these benefits. Indeed, as additional jurisdictions seek to significantly reduce the influence of public sector unions and move to a structure mimicking that experienced prior to the 1960s—when public sector unions had no legal authority to collectively represent their members—the level of support among residents of the jurisdiction will be critical to their survival. For most of the period of their rise to prominence, public sector unions had the support of private sector unions in a demonstration of solidarity. With a private sector union membership that is constantly declining, it remains to be seen how the arguments to preserve (let alone expand) public employee benefits and rights will resonate with

taxpayers and residents who, in all likelihood, are not union members and do not have the same benefits and job protections enjoyed by unionized public sector employees. Additional studies of taxpayer attitudes toward their jurisdiction's employees, therefore, coupled with case studies of jurisdictions where take-backs have been attempted, both successfully and unsuccessfully, would greatly add to the public administration body of knowledge.

The findings of this dissertation suggest that statutory bargaining laws and collective bargaining agreements will impinge the ability of management in employee discipline issues, as well as larger policy considerations, if they are perceived to have any negative effect on employees. Indeed, the inability to unilaterally manage is a concern expressed globally, and verified by the literature. A research effort examining successful labor-management initiatives that benefits the public as well as the employees is suggested. Such variables as open communications, transparency, public sector motivation, could be analyzed, along with the managerial attitudes with respect to sharing a portion of their authority, to determine the factors which made the collaborative initiative a success.

The case study research conducted for this dissertation utilized two jurisdictions co-located geographically, with similar population demographics and political-public policy cultures, but opposite approaches to dealing with employee concerns. Additional research on jurisdictions, one with collective bargaining and one without, but absent a prohibition against collective bargaining, would add to the body of knowledge. Previous research has shown that non-union organizations sometimes match union benefits as a way to thwart unionization, and comparing such jurisdictions would further add to the body of knowledge. To paraphrase Norma Riccucci, (2011) public sector unions play a major role in politics and policy making at all levels of government, and multiple avenues exist to conduct research and help build the body of knowledge and theory on public sector unionism.

Appendix I

Interview Questions Utilized in Data Gathering

A. Interview with Susan Woodruff, Director, Fairfax County, Department of Human Resources (October 17, 2012)

1. Preliminary analysis of public safety employees shows that in some cases Fairfax County is ahead or even with other jurisdictions. Is there a conscious policy to "compete" with Montgomery County with respect to economic positions?
2. Salary—pensions, health insurance etc.
3. Management Issues—Unlike MC, FF has no collective bargaining. Advocates say that the absence of unions means management has more autonomy. What roles if any do employees associations play in working conditions issues?
4. Does the absence of a union make it easier to discipline employees?
5. What are the key HR issues—leave abuse, absenteeism, FMLA, flexibility in assigning work, etc.?
6. Other observations.

B. Interview with Ronald L. Mastin Chief, Fairfax County Department of Fire and Rescue. December 7, 2012—retired May 7, 2013)

1. Of the nearly 1900 staff of FCFRD how many are uniformed or sworn personnel?
2. How active (in number and scope) are the volunteer firefighters? There are 12 active volunteer fire departments in Fairfax County. Volunteers are active operationally as well as administratively - with nearly 300 volunteer personnel available to provide supplemental staffing for fire and rescue services (website)

3. How active (in number and scope) is Local 2068 of the IAFF in the politics of Fairfax County? Describe your relationship with Local 2068?
4. How would you describe the influence Local 2068 has in county government, with 1 describing no influence, and 5 describing outsized or undue influence? Explain your response.
5. Using the same metrics, how would you describe the Local's influence over FRSD policy matters?
6. Explain your response.
7. Using the same scale, how would you describe the Local's influence over personnel matters (discipline, discharge, promotions, assignments etc.) Explain your response.
8. A basic salary comparison between Fairfax and Montgomery shows a sizeable advantage for Fairfax in starting salary (+\$4,782) and after 25 years of service (+\$6,621), but the advantage is turns to Montgomery once the shifts and hours worked are taken into account. Any observations or comments?
9. Any other statements on the advantage of not having to deal with collective bargaining?

C. Interview with David M. Rohrer, Chief, Fairfax County Department of Police, December 7, 2012. (On October 20, 2012, Rohrer was promoted to Deputy County Executive of Fairfax County)

1. How active (in number and scope) are police officers or their organizations in the politics of Fairfax County?
2. Describe your relationship with organizations representing police officers
3. How would you describe the influence of FOP Lodge 77 or the Fairfax Police Association in county government, with 1 describing no influence, and 5 describing outsized or undue influence? Explain your response.

4. Using the same metrics, how would you describe their influence over PD policy matters?
5. Explain your response
6. Using the same scale, how would you describe their influence over personnel matters (discipline, discharge, promotions, assignments etc.) Explain your response.
7. Comparison between Fairfax and Montgomery shows a sizeable advantage for Fairfax in starting salary \$2,112 Fairfax officers continue to receive a positive salary differential, as compared to Montgomery County police officers, until the end of 15 years of service, at which time the advantage tilts to Montgomery County by \$2,426, and continues to grow incrementally so that by the end of 25 years of service a Fairfax County officer makes \$3,165 less or -3.78 percent (\$83,609,) than a comparable Montgomery County police officer. Any observations or comments?
8. Any other statements on the advantage of not having to deal with collective bargaining?

D. Interview with Tom Manger, Chief, Montgomery County, Department of Police, since January 2004, and Former Chief of Fairfax County Department of Police, February 19, 2013.

1. Career Highlights—in Fairfax and Montgomery
2. On a scale of one to five, rank the influence Police organizations enjoy in Fairfax County Government?
3. On the same scale, rank their influence in Police Department matters of policy.
4. On the same scale, rank their influence in Police Personnel matters.
5. What do you believe is the reason for the (or lack of) the influence?
6. During your tenure as Chief, characterize the relations with Police organizations in Fairfax?

7. Preliminary research indicates that Police salaries between Montgomery and Fairfax tend to be competitive—Give your reasons?
8. Turning attention to Montgomery—repeat questions 2-6
9. Influence in county government?
10. Influence in police department policy issues?
11. Influence in Police personnel matters?
12. Name one or two of the most vexing issue where the FOP exerted influence—detail
13. Do you believe that the presence of statutory collective bargaining gives Police unions the ability to exert undue influence? Explain.
14. Other concerns

E. Interview with Ritchie Bowers, Chief Montgomery County Department of Fire and Rescue Service, February 19, 2013. (Chief Bowers retired from Montgomery County in April 2013 and became the Chief of the Fairfax County Department of Fire and Rescue)

1. Career Highlights
2. Familiarity with IAFF?
3. On a scale of 1-5 rank the IAFF's influence in Montgomery County Government?
4. On the same scale, rank their influence in FD policy matters?
5. On the same scale, rank their influence in FD personnel issues?
6. What do you believe is the reason for their influence?
7. During your tenure as Chief, characterize your relations with the union?
8. Preliminary research indicates that Fairfax Firefighters enjoy higher salaries at almost every step—reasons?

9. Do you believe that the presence of statutory collective bargaining gives IAFF the ability to exert undue influence? Explain.
10. Other comments?

F. Interview with Arthur Wallenstein, Director, Montgomery County Department of Correction and Rehabilitation, April 13, 2013 (Director Wallenstein retired on January 30, 2015)

1. Career Highlights
2. Familiarity with MCGEO Corrections union
3. On a scale of 1-5 rank the MCGEO's influence in Montgomery County Government ?
4. On the same scale, rank their influence in DOCR policy matters?
5. On the same scale, rank their influence in DOCR personnel issues?
6. What do you believe is the reason for their influence?
7. During your tenure as Director characterize your relations with the union?
8. Preliminary research indicates that Fairfax DS I Corrections enjoy higher salaries at almost every step—reasons?
9. Do you believe that the presence of statutory collective bargaining gives MCGEO the ability to exert undue influence? Explain.
10. Other comments.

G. Interview with Stan Barry, Elected Sheriff of Fairfax County, March 18, 2013

1. Describe your background as the elected Sheriff.

2. How would you describe the influence of the Deputy Sheriffs or their organization county government, with 1 describing no influence, and 5 describing outsized or undue influence? Explain your response.
3. Using the same metrics, how would you describe their influence over policy matters? Explain your response
4. Using the same scale, how would you describe their influence over personnel matters (discipline, discharge, promotions, assignments etc.) Explain your response.
5. Comparison between Fairfax and Montgomery shows a sizeable advantage for Fairfax in starting salary. Fairfax deputies continue to receive a positive salary differential, as compared to Montgomery County police officers, until the end of 15 years of service, at which time the advantage tilts to Montgomery County by \$2,426, and continues to grow incrementally so that by the end of 25 years of service a Fairfax County officer makes \$3,165 less or -3.78 percent (\$83, 609,) than a comparable Montgomery County police officer. Any observations or comments?
6. Any other statements on the advantage of not having to deal with collective bargaining?

H. Interview with Anthony Griffin, Former County Executive of Fairfax County. April 3, 2013. (Griffin was County Executive from 2000-2012)

1. Synopsis of Fairfax County public sector Career.
2. Describe your familiarity with public safety services in Fairfax County?
3. Montgomery County employees, including public safety employees have the right to collective bargaining, while Fairfax employees do not have this right. Do you believe that it makes a difference in how these services are delivered? Does it make a difference to the employees?

4. Preliminary research indicates that on the whole, the presence of legally mandated collective bargaining has not resulted in a long term salary advantage for Montgomery County employees. Why do you think this is so?
5. The next set of questions will ask about the influence, both macro and micro, of each of the identified unions/employee associations in Fairfax County, both the political and public administration processes as well as specific public safety departments. On a scale of 1-5, with 1 being minimal or none at all, and 5 being outsized influence please rank each public safety union/association concerning their activity in the county's political process.
6. Using the same scale—how active are they in public administration?
7. How active are the various organizations representing police officers, both in county politics, government, and on police department's internal processes?
8. How active is the IAFF, on county politics, government and on the fire department's internal processes?
9. How active are the organizations representing deputy sheriffs on county politics, government and on the internal administration of the Sheriff's Office?
10. Any other public unions active in Fairfax County?
11. Describe your relationships with county government unions/employee associations during your tenure as County Executive?
12. Do you believe that unions hinder the efficient administration of government services?
13. Any other comments/concerns with public safety employee unions, collective bargaining, or whether they usurp management's prerogatives to administer their departments?

I. *Interview with Sharon Bulova, Chair, Fairfax County Board of Supervisors, May 29, 2013.*

1. Highlights
2. Overview of employee issues in Fairfax County
3. Discussion of Issues affecting public safety—police, fire, deputy sheriff's?
4. Fairfax's standing in the region in terms of salaries and benefits.
5. How familiar are you with unions and employee organizations claiming to represent employees in Fairfax County?
6. General government employees-
7. Sworn Police and Deputy Sheriffs
8. Uniformed Firefighters
9. On a scale of 1(no influence) to 5(strong influence) rank the influence of SEIU and others representing general government employees. Be specific—what factors make them influential.
10. Administration of public services-Personnel issues
11. Political issues and elections.
12. On a scale of 1(no influence) to 5(strong influence) rank the influence of unions and organizations representing police officers
13. On a scale of 1 (no influence) to 5(strong influence) rank the influence of Unions and organizations representing deputy sheriffs.
14. On a scale of 1(no influence) to 5(strong influence) rank the influence of the IAFF in representing Firefighters.

15. Are there instances when unions go over the heads of departments or the County Executive and take their issues to the Board of Supervisors?
 - a. Examples of the above.
16. Any other comment or insight into how Fairfax takes employee concerns into account in the absence of statutorily mandated collective bargaining?

J. Interview with Jeff McKay, Member, Fairfax County Board of Supervisors, June 19, 2013.

1. Career Highlights
2. Overview of Employee Issues in Fairfax County
3. Discussion of Issues affecting public safety—police, fire, deputy sheriff's?
4. Fairfax's standing in the region in terms of salaries and benefits
5. How familiar are you with unions and employee organizations claiming to represent employees in Fairfax County?
6. General government employees-
7. Sworn Police and Deputy Sheriffs-
8. Uniformed Firefighters--
9. On a scale of 1(no influence) to 5(strong influence) rank the influence of SEIU and others representing general government employees. Be specific—what factors make them influential.
10. Administration of public services-
11. Personnel issues-
12. Political issues and elections.
13. On a scale of 1(no influence) to 5(strong influence) rank the influence of unions and organizations representing police officers.

14. On a scale of 1(no influence) to 5 strong influence) rank the influence of unions and organizations representing deputy sheriffs.-
15. On a scale of 1(no influence) to 5(strong influence) rank the influence of the IAFF in representing firefighters. Are there instances when unions go over the heads of departments or the County Executive and take their issues to the Board of Supervisors? Examples of the above?
16. Any other comment or insight into how Fairfax takes employee concerns into account in the absence of statutorily mandated collective bargaining?

K. Interview with Penelope Gross, Member, Fairfax County Board of Supervisors and Chair of the Board's Personnel Committee, July 1, 2013.

1. Career Highlights
2. Overview of employee issues in Fairfax County
3. Discussion of Issues affecting public safety-police, fire, deputy sheriff's?
4. Fairfax's standing in the region in terms of salaries and benefits
5. In your role as Chair of the Board's Personnel Committee, how familiar are you with unions and employee organizations claiming to represent employees in Fairfax County?
6. General government employees-
7. Sworn Police and Deputy Sheriffs-
8. Uniformed Firefighters--
9. On a scale of 1(no influence) to 5(strong influence) rank the influence of SEIU and others representing general government employees. Be specific-what factors make them influential.

10. Administration of public services-
11. Personnel issues-
12. Political issues and elections.
13. On a scale of 1(no influence) to 5(strong influence) rank the influence of unions and organizations representing police officers
14. On a scale of 1 (no influence) to 5 (strong influence) rank the influence of Unions and organizations representing deputy sheriffs.
15. On a scale of 1(no influence) to 5(strong influence) rank the influence of the IAFF in representing firefighters.
16. Are there instances when unions go over the heads of departments or the County Executive and take their issues to the Board of Supervisors?
 - a. Examples of the above.
17. Any other comment or insight into how Fairfax takes employee concerns into account in the absence of statutorily mandated collective bargaining?

L. Interview with Cathy Hudgins, Member, Fairfax County Board of Supervisors, November 1, 2013.

1. Career Highlights
2. Overview of Employee Issues in Fairfax County
3. Discussion of Issues affecting public safety-police, fire, deputy sheriff's?
4. Fairfax's standing in the region in terms of salaries and benefits
5. How familiar are you with unions and employee organizations claiming to represent employees in Fairfax County?

6. General government employees-
7. Sworn Police and Deputy Sheriffs
8. Uniformed Firefighters
9. On a scale of 1(no influence) to 5(strong influence) rank the influence of SEIU and others representing general government employees. Be specific—what factors make them influential.
10. Administration of public services-
11. Personnel issues-
12. Political issues and elections.
13. On a scale of 1(no influence) to 5(strong influence) rank the influence of unions and organizations representing Police Officers.
14. On a scale of 1(no influence) to 5(strong influence) rank the influence of unions and organizations representing deputy sheriffs.
15. On a scale of 1(no influence) to 5(strong influence) rank the influence of the IAFF in representing firefighters. Are there instances when unions go over the heads of departments or the County Executive and take their issues to the Board of Supervisors?
 - a. Examples of the above?
16. Any other comment or insight into how Fairfax takes employee concerns into account in the absence of statutorily mandated collective bargaining?
17. Do you believe that the absence of statutory collective bargaining for public employees greatly affects outcomes in terms of salary, benefits, or workplace due process rights?

M. Interview with John Cook, Member, Fairfax County Board of Supervisors, December 11, 2013.

1. Career Highlights.

2. Overview of Employee Issues in Fairfax County.
3. Discussion of issues affecting public safety—
police, fire, deputy sheriffs?
4. Fairfax's standing in the region in terms of
salaries and benefits.
5. How familiar are you with unions and employee
organizations claiming to represent employees in
Fairfax County?
6. General government employees
7. Sworn Police and Deputy Sheriffs
8. Uniformed Firefighters
9. On a scale of 1(no influence) to 5(strong
influence) rank the influence of SEIU and others
representing general government employees. Be
specific—what factors make them influential.
10. Administration of public services—
11. Personnel issues—
12. Political issues and elections.
13. On a scale of 1(no influence) to 5(strong
influence) rank the influence of unions and
organizations representing Police Officers.
14. On a scale of 1(no influence) to 5(strong
influence) rank the influence of unions and
organizations representing Deputy Sheriffs.
15. On a scale of 1(no influence) to 5 (strong
influence) rank the influence of the IAFF in
representing Firefighters. Are there instances when
unions go over the heads of departments or the
County Executive and take their issues to the Board
of Supervisors?
 - a. Examples of the above?

16. Any other comment or insight into how Fairfax takes employee concerns into account in the absence of statutorily mandated collective bargaining?
17. Do you believe that the absence of statutory collective bargaining for public employees greatly affects outcomes in terms of salary, benefits, or workplace due process rights?
18. Any other public official to interview?

N. Interview with Ritchie Bowers, Chief, Fairfax County Department of Fire and Rescue, March 24, 2014

1. Background and tenure with current position
2. Size and composition of the Fairfax County FRS
3. Describe your knowledge of the Fairfax IAFF Local—Strength, representation, reputation etc.
4. How would you describe your relationship with the IAFF Local?
5. How does Local 2068 approach a workplace issue?
6. Describe your knowledge of Local 2068's approach to elections in Fairfax and their relationship to the Board of Supervisors.
7. In your opinion is Local 2068 effective in representing their members both for economic gains and workplace due process issues? Elaborate
8. How is Local 2068 different in representation style and advocacy from Local 1664?
9. Do you believe that the absence of legally mandated collective bargaining has hindered Local 2068 from effectively representing their members? Explain.
10. What are the major differences in leading a FRS department with collective bargaining such as Montgomery County FRS and one without collective bargaining, such as Fairfax County?

11. Other comments

O. Interview with John Niemec, President, Fairfax County Professional Firefighters Association. Local 2068, International Association of Fire Fighters (IAFF) April 14, 2014.

1. Briefly describe your background and tenure in current position?
2. What is the size and composition of the Local? Number of members, ranks represented, organizational strength and percentage penetration?
3. Any formal or informal relationship with other employee groups or unions representing Fairfax County (non FRS) employees?
4. Police - Sheriff and/or Corrections
5. General government (SEIU)?
6. How would you describe the Local's strength or power in advocating for and representing the membership?
7. Describe your approach to FRS leadership in bringing matters to his attention? What types of issues are resolved at the Chief's level?
8. Describe the working relationship with the County Executive. What types of issues are resolved at his level?
9. Describe your relationship to the Board of Supervisors, as a body and certain individual Supervisors. What types of issues are brought to the Board's attention, and how are they resolved- Percentage of "wins or losses". Provide specific examples.
10. Many observers of Fairfax County government have made positive statements concerning Local 2068's political prowess. Describe the Local's philosophy and approach to political endorsement and supporting candidates. Does an endorsement by the Union make a difference in the outcome?

11. What percentage of your budget is spent on political education and candidate support? What else does the Local bring to the table?
12. Can you cite any reasons why other public safety groups or unions in Fairfax County do not have the same reputation in terms of political strength that Local 2068 has?
13. On an annual basis Fairfax County Firefighters' base salary is nearly 20% higher than Montgomery County. What do you attribute the difference to?
14. Do you believe that the presence of statutory collective bargaining makes a substantial difference in the everyday lives of your members? Please elaborate. If the statewide ban was lifted, and Fairfax enacted a bargaining statute, would it change how Local 2068 approaches issues? And would the Local spend less resources on political campaigns?
15. Other comments/ other persons to interview?

P. Interview with Jeff Buddle, President, Montgomery County Professional Firefighters Association. Local 1619, IAFF, April 29, 2014.

1. Background and tenure with current position
2. Size and composition of Local 1664
3. How would you describe your relationship with DFRS Management-Current and Previous Chiefs?
4. How does Local 1664 approach a workplace issue?
5. In your opinion is Local 1664 effective in representing their members both for economic gains and workplace due process issues? Elaborate?
6. How is Local 2068 different in representation style and advocacy from Local 1664?-if known-
7. Comparisons to other IAFF locals in the region.

8. Were you active prior to CB in Montgomery County?
Notice any differences?
9. Political activism—is it necessary if there is CB?
10. Local level
11. State level
12. What are the major differences in leading a FRS department with collective bargaining such as Montgomery County FRS and one without collective bargaining, such as Fairfax County?
13. General views on legally mandated CB.
14. Other comments.

Q. Interview with Mike Subin, Member, Montgomery County Council from 1986-2006, October 3, 2014.

1. 1 Year on Council and leadership posts held.
2. Familiarity with employee issues and collective bargaining.
 - a. Police "effects" bargaining
 - b. MCGEO-impasse arbitration law
3. What is your impression of the influence of MC unions on the County Council?
 - a. IAFF
 - b. FOP
 - c. MCGEO
4. Do you believe that MC public unions political support of Council candidates and incumbents influence the decisions made by Council? If so, please elaborate.
 - a. endorsements

- b. campaign contributions
 - c. phone banks, poll workers, literature drops etc.
5. Is the public adequately represented when negotiated contracts are brought before the Council?
 6. Given the reality of public sector union involvement in the political process, plus the presence of a merit system, does the addition of legally mandated bargaining tip the scales in favor of unions?
Elaborate.
 7. From time to time, there have been proposals and "trial balloons" to give Council a greater role in the collective bargaining process. Your thoughts?
 8. You were involved in an attempt to scale back negotiated pay increases. What was your rationale and what was the aftermath from County unions?
 9. As you may be aware, the current Council took unilateral action to eliminate FOP effects bargaining, and to narrow the eligibility for service connected disability retirements. Insights as to why?
 10. Other comments and observations

R. Interview with Steve Farber, Montgomery County Council Staff Director, and Mike Faden, Montgomery County Council Senior Legislative Attorney, October 13, 2014

1. Experience with Montgomery County.
2. Familiarity with history of County unions.
3. What was the process utilized for employee benefits prior to the enactment of collective bargaining?
4. Recollection as to why the Council enacted:

5. Binding impasse arbitration for non public safety employees-
6. Effects bargaining for FOP
7. The 10-day mini-bargaining-
8. Do you agree or disagree with the perception that historically County unions have had an outsized influence with members of the Council? Elaborate.
9. Current structure of Council having the last word on matters involving appropriations with collectively bargained agreements adequately represent the public interest?
10. From time to time there have been proposals and "trial balloons" to give Council a greater role in the collective bargaining process. Your thoughts?
11. Given the reality of public sector union involvement in the political process. plus the presence of the merit system, does the addition of legally mandated bargaining tip the scales in favor of unions in the political/policymaking process
12. As you are aware, Council took unilateral action to eliminate FOP's "effects" bargaining and to narrow the eligibility for service connected disability retirements. Insights as to why? How would you modify the current process? Why?
13. Other comments, insights or observations on collective bargaining in MC?

Appendix II

Police Chief Manger's Response to County Council on Effects Bargaining

Author: Please give examples of issues that could have been the subject of "effects bargaining".

Manger: Every statutory employer right as defined by statute 33-80 (b) is subject to effects bargaining and is a mandatory subject of bargaining. Some examples are:

- Packet Writer
- Mobil AFIS
- AVL
- E-citation
- Holsters
- Rifle sights
- SOP's
- Directives
- Trainer/Trainee relationships
- Mandatory use of email
- Proficiency advancements and time in grade
- Uniforms at In-Service training
- PPV reassignment
- Evidence Technician work hours
- MC Timesheet/Telestaff

Author: What is a typical timeline for negotiation and impasse procedures?

Manger: Typically, a minor matter will take between two weeks and 90 days to resolve without any impasse being declared by either party.

A more significant matter (as determined by either party) can take up to two years or more to bargain.

- Impasse is declared an arbitrator must be selected and scheduled. This typically takes at least two months. A mediation/arbitration proceeding between one and three days.
- The decision may not be rendered for weeks following the proceeding

Author: What costs are associated with negotiations and impasse procedures?

Manger: During bargaining a negotiations team from each party is designated and will vary in size based on the complexity of the issue. The employer's team of representatives may also include OHR employees and a member of the County Attorney's office. The range of representatives varies between two and five for normal negotiations. All FOP members attending these bargaining sessions are granted administrative leave (if not term bargaining this should be taken from the FOP leave bank).

Arbitrator costs vary and range between \$425 - \$1,500 per day. This includes the time spent draft their opinion.

Author: The "effects bargaining" provision only applies to the exercise of a management right that has an effect on the members of the bargaining unit. Can you give us an example of a management right that you exercised without bargaining with the FOP because it did not have an effect on the members of the bargaining unit? If so, did the FOP accept this determination? If not, how was the dispute resolved?

Manger: November 2010 Department recognized a personnel shortage of officers in the 3rd District due to various factors including officers deployed on military leave, on light duty or on administrative leave.

- Needed to supplement staffing levels to maintain service to the community and reduce crime.
- November 29 memo sent out requesting volunteer officers to be temporarily reassigned to the 3rd District.
- No notice was given to the FOP because this was a voluntary program.
- FOP demanded to bargain this matter on December
- Due to the Department's need to address the shortage, planning continued with the officers who volunteered to be transferred to the 3rd District. FOP objected to this action in communication with us on January 14, 2011.
- Communications between the Department and FOP continued while officers began their voluntary redeployments to the 3rd District starting January 30.
- Agreement with FOP was reached on March 4, 2011. By this time, several of the originally transferred officers had completed their

assignment and returned to their previous duty assignment.

- MCPD was at risk of being charged with a PPC if no agreement was reached.

Author: Can you compare the exercise of management rights as applied to MCGEO (within MCPD) as compared to the FOP?

Manger: MCGEO Process— There are several units within MCPD that are made up of primarily MCGEO members, such as ASD, ECC, Crime Lab and Security. When ECC, a division comprised of primarily MCGEO employees, needs to implement an Operational Change, it is done so immediately and a copy of the change is placed in the MCGEO mailbox for review. If the change is a mandatory subject of bargaining, they discuss it at LMRC and then notice the Union of the proposed change. For example, Management may send a copy of the SOP with the proposed revision(s) to MCGEO and MCGEO has 30 days to respond. They can either accept the changes or inform the Department of clarifications or issues. Once issues are resolved the Department has to send Notice of Implementation to MCGEO as long as the Union is satisfied with the change, it takes effect. Generally, this procedure takes approximately 3-4 weeks to complete.

Examples:

- 2010 Management exercised its management right to change the operating hours of the Chemistry Lab. The Union was noticed, provided input and the hours were changed.
- 2008 Management exercised its right to change the work schedules and hours of ASD employees. The Union was noticed, provided input and the hours were changed.

FOP Process: In order to exercise a management right, the department's belief is any bargaining deemed necessary would fall under "Effects Bargaining". The department needs to notify the FOP and allow them an opportunity to accept it or demand to bargain. The bargaining process can last days or years.

Examples

- 2011 the Department exercised a restructuring due to budgetary lack of funds. The FOP was notified and quickly agreed to the changes in one day.

- Mobile AFIS devices were bargained beginning in October 2007 and an agreement was reached in March 2008.
- The Department uses SOP's (Standard Operating Procedures) as a management right to establish procedures not covered by its Rules and Regulations under the Department Directive system. The Department entered into bargaining of the 1st District's SOP with the FOP following a Prohibited Practice Charge filed with the Permanent umpire in October 2007 and reached agreement on that one SOP in September 2009.

Author: Can you give an example of where you exercised a management right to increase effectiveness and efficiency of operations of the Department and the resulting negotiations diminished your ability to hold officers accountable, implement effective policy or provide efficient resources to the public?

Manger: PacketWriter

- The Department sought to implement PacketWriter in an effort to improve its efficiency and effectiveness in operations by converting the department's report writing system to an electronic version instead of using paper report forms and mandating that officers use only PacketWriter. The FOP made a demand to bargain PacketWriter in February 2006. An agreement was not reached to mandate PacketWriter use until May 2009. Prior to the May 2009 date, officers were allowed to write reports in either the electronic format or using the old paper forms. This created record keeping challenges and additional costs to the Police Department.

AVL

- The Department sought to implement an Automatic Vehicle Locator system which allows ECC to identify the location of police vehicles equipped with computers. The negotiations resulted in an agreement where data from this system will not be used in any disciplinary action or internal investigation or administrative hearing board proceeding concerning any FOP member.

Email

- The mandatory use of email has been sought by the Department in the past. Negotiations with the FOP resulted in an agreement on email use. However, no agreement for the mandatory use of email has ever been reached and its use remains voluntary for its members. The Department is still required to provide printed communications with its officers since FOP members are not required to read or maintain an email account with the County.

Author: This is a committee that recognizes the importance of collective bargaining. If effects' bargaining is eliminated, won't important subjects of bargaining be impacted?

Manger: No, because the County law and the collective bargaining agreement with the FOP requires bargaining over salary, wages, pension benefits, retirement, hours and working conditions, grievance process and health and safety issues. Many aspects of "effects bargaining" are covered under the collective bargaining agreement already.

- directives
- transfers
- promotions
- discipline
- hours and working conditions (scheduling)
- evaluating employees

In addition, the Department and FOP have established joint committees to work on solutions of issues of mutual concern that arise. Examples include Health and Safety Committee, LMRC, Training Committee, Awards Committee, Collision Review Committee.

Appendix III

FOP testimony on Effects Bargaining

Statement of FOP Lodge 35, Against Changes in the Police Labor Relations Law

Montgomery County Lodge 35, Inc.

18512 Office Park Drive Montgomery Village, MD 20886

Phone: (301) 948-4286 Fax: (301) 590-0317

Statement of Fraternal Order of Police, Montgomery County Lodge
35

Tuesday, July 12, 2011

We are here again because the County clearly wants the priority of County police officers to be fighting for their rights rather than providing services to the public. For shame, because despite years of VOLUNTARY concessions by police officers made during the County's tight fiscal situation, and as the County budget increases, we have to be here to spend our time defending a process that has worked for nearly three decades. It worked up until the day politicians found process under law inconvenient to their purpose.

The County Council has several bills before it. These bills arise from a very questionable set of recommendations in the January 2011 report of the Organizational Review Commission. The most questionable is based on a recommendation on so called "effects bargaining."

The capital budget is in the billions of dollars, yet the commission had some special interest in the collective bargaining process which has worked well for over 28 years. The commission showed no interest in either the very high salaries of on-represented, non-union employees or the means which their salaries and benefits are established. Clearly the commission was carrying water for political interests. This recommendation is outside the scope of the commission's charge and should be dismissed.

Employee contract negotiations are no different than any other negotiations the County engages in for

services. The County employs both represented and non-represented employees. It seems odd that the Commission focused on employee contracts for a minority of county compensated employees. There are 15,000 county employees and 22,000 MCPS employees. There are but 1200 police officers.

The minutes of the commission do not show any detailed discussion of what is called "effects bargaining". Apparently, they did some of their work in secret while maintaining a misperception of openness and transparency. Their work seems more political, and devised in secret without scrutiny or accountability. In its final report, the commission makes conclusions based on either secret conversations that are not documented or were documented and are now withheld from public view. We have filed a complaint with the police department to have them investigate. This is a matter of management's integrity and accountability. [Attached]

Their conclusions are based upon a false premise. Either the commission made up what it asserts to be facts, or someone gave false and misleading information. [See PIA records request and response, attached] In any event, we met with the commission and were never afforded any opportunity to respond to any allegations or assertions concerning "effects" that were ultimately presented in the final report.

Since there are only two parties to "effects bargaining", it is patently unfair that the commission heard from only one party and never afforded FOP Lodge 35 any opportunity to respond. The commission called its credibility into question through this one-sided approach. Also, clearly, as noted by one commission member, effects bargaining was not within the charge of the commission. For whatever reason, the co-chairs of the commission and a majority of that commission allowed it to be used for political purposes with little or no consideration to fairness, balance, perspective or veracity. We have responded to portions of the commission's report. [Attached]

"Effects bargaining" comes out of a case that was decided by the United States Supreme Court. It is a

complex topic, rarely understood by its critics. Effects bargaining has never had any adverse impact upon our ability to respond to calls for service or to protect the public. Indeed, we estimate that about 95% of the police department's business is not subject to bargaining and we have no interest in requiring such bargaining. Penultimately, under our law, issues subject to "effects bargaining" are subject to an expedited resolution process. In 2004 we agreed to a law change that sets a very short period to go to impasse and resolve effects matters. Management has rarely, if ever used that process and has no right to complain.

Some, notably Councilmember Phil Andrews, have consistently distorted the facts and been less than candid about effects bargaining. Mr. Andrews uses the in-car video program as an example that he claims makes his point. Assuming, *arguendo*, that in-car video involves effects bargaining, the fact is that the county proposed a pilot program. The County began bargaining cameras, and bought them. They were installed in vehicles and operating. Several legal issues arose during discussions as several cameras were field tested. Our chief concern was the wiretap laws and public and officer privacy rights.

The County, not FOP Lodge 35, sought to discontinue discussions. Then Chief Charles Moose contacted us and asked to call off negotiations because the County wanted to return the cameras and use the money for something else. In any bargaining, once a party abandons or withdraws its proposal, the proposal is off the table. Thereafter, we went through several rounds of term negotiations and the County never raised the subject, nor did they pursue it in any other manner until very late in term bargaining in December 2007. The issue was resolved and an agreement signed in 2008. We have testified under oath to the history of this subject. Mr. Andrews' uninformed statements have not been under oath.

We have little interest in most operational policies, such as processing prisoners, opening facilities, determining functions like school resource officers, determining enforcement priorities and the like. To our knowledge we have only been to impasse on one

issue, and that was successfully mediated prior to a hearing. Other issues that have successfully bargained and agreements reached include technology changes affecting the way work is done, increasing the number of supervisors on the midnight shift, and reducing the number of master police officers. There are others.

It is far more likely that inept management and ineffectual leadership hinder police operations. We meet with police management quarterly in a labor relations meeting, we resolve issues in the workplace daily and we have solicited regularly for any outstanding items the County wishes to discuss. [Attached] In fact, most issues arising from operational changes are resolved without controversy. But the issue must be brought to our attention. If there is a problem with police officers checking email, we were not made aware of it until today's newspaper was delivered to our office.

Again, contract negotiation with employees is no different than contract negotiation with any other service provider. Public access to proposals during bargaining harms the ability to openly discuss all options. The County does not make public negotiations with Live Nation, Costco, Westfield or other corporations with which it deals. Additionally, the premise that the public has no input in the collective bargaining process is false. The public is at the table. We serve and live in the County.

The commission fails to show that the fair and level playing field established under the Police Labor Relations Article for impasse arbitration is in any way deficient. In recommending a change to the impasse procedure the commission fails to cite one arbitration decision that was unsound. The only fact cited is the number of arbitrations and who prevailed. This is analogous to determining that the rules of baseball must be changed based on the number of time the New York Yankees make it to the World Series. No one has identified any deficiency in the impasse arbitration process other than the FOP has been found to be more reasonable than the County more often than not. We are not surprised by that statistic.

The police officers in Montgomery County want to return to work. Instead, we are called here to address baseless attacks on our rights under law a process that has kept police officers doing what they should be doing: protecting and addressing the public safety concerns of the community.

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Appendix IV

"Special Interests" and Political Contributions: The Macro View

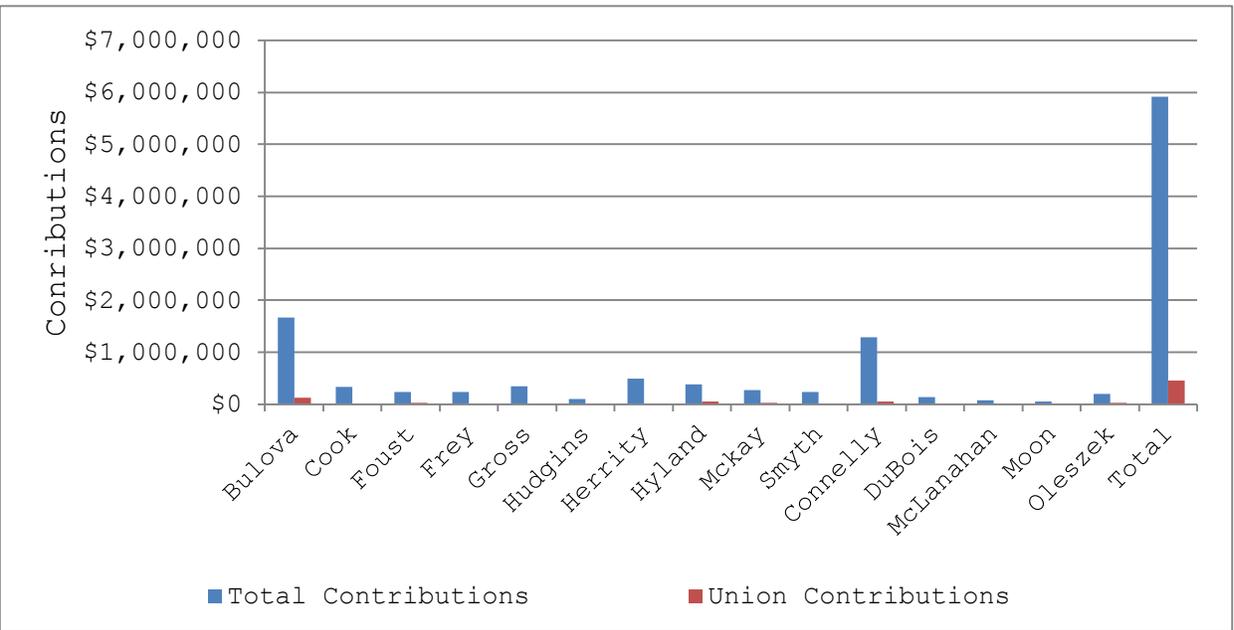
Unions along with thousands of other organizations or special interest groups pour billions of dollars into state and local government races. From calendar year (CY) 2000 to CY 2012, almost \$22 billion was contributed by all special interests to campaigns in all 50 states (NIMSP 2013). Of this amount, \$1.671 billion came from unions, amounting to 7.76 percent of the total (Ibid.). When narrowed further to only include public sector unions the total drops to \$967.1 million (Ibid.). While the amount given by public sector unions is not insignificant (nearly one billion dollars nationally), it only comes to 4.5 percent of the amount donated by all special interests. The impact of special interests making campaign donations to influence state and local government policy and politics is a legitimate area of concern. The data presented here, however, does not support the argument that unions—including public sector unions—are dominant in the use of campaign donations to influence public policy. Unions in Virginia comprised less than 3 percent of the total expenditures of all special interest groups during 2001-2012; of that, public sector unions spent only 1.5 percent

of the total. Unions in Maryland spent less than 5 percent of special interest expenditures during 2002-2012, and public sector unions spent 2.25 percent of the total (NIMSP 2013). As discussed below, the campaign expenditures made by public safety unions in Fairfax and Montgomery Counties are well within these parameters. While the total amount spent by unions for Fairfax County Board of Supervisor positions in 2005-2013 is not insignificant, it still pales in comparison to the total amount received by each candidate from all other sources. Figure 32 and Table 32 highlight the fact that political contributions from unions comes to less than 8 percent of campaign contribution received from all sources.

Candidate	All funds	Public Union donations
Bulova	1,670,461	129,470
Cook	331,663	5,000
Foust	232,255	23,500
Frey	240,214	11,500
Gross	342,405	2,000
Hudgins	100,992	16,500
Herrity	497,281	450
Hyland	379,084	45,810
McKay	272,716	30,250
Smyth	230,120	9,500
Connelly	1,291,267	53,900
DuBois	133,106	7,500
McLanahan	77,106	10,000
	56,604	12,500
Oleszek	195,697	24,500
Total	5,918,725 (92.24%)	458,984 (7.76%)

(Left) Table 32. Union Contributions vs. All Contributions for Fairfax County Board of Supervisor Positions, 2005-2013

(Below) Figure 32. Chart of Union Contributions vs. All Contributions for Fairfax County Board of Supervisor Positions, 2005-2013



Appendix V

**Montgomery County IAFF CBA
IAFF Local 1664 and Montgomery County Collective Bargaining
Agreement
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APPENDIX I - OPT UNIT - SHERIFFS

(a) The clothing allowance shall be \$1338.00.

(b) Procedure for Payment of Clothing Allowance

(1) The clothing allowance shall be paid to the member in quarterly installments every 3 months from the time the unit member is assigned. The amount paid to the unit member shall be pro-rated and paid, on a quarterly basis, in January, April, July and October.

(2) Unit Members transferred to a position that is a non-uniform capacity shall receive a clothing allowance advance under the following conditions:

(A) the member must be transferred from a uniform to a non-uniform status for at least 2 full pay periods;

(B) the member must not have worked in the past calendar year in a unit that receives a clothing allowance; and

(C) the advance received shall be equal to the amount the member is entitled to annually.

(c) Shoe Allowance for Non-uniformed Employees

Unit members receiving a clothing allowance shall receive \$105.00 per year for shoes, to be paid as provided in (b) of this Article.

(d) Deputy Sheriffs will receive the above allowances unless otherwise required to wear uniforms.

(e) Deputy Sheriffs who have their police powers removed will not be entitled to clothing allowances during the period of removal.

(f) The Employer will provide a cleaning service to those employees receiving a clothing allowance.

(g) Shoe Allowance for Certain Uniformed Officers

Unit members requiring irregular shoes sizes that are considered "hard to fit", i.e. size not available through supply, shall receive an annual shoe allowance of \$125.00.

(h) Canine officers shall be compensated for the care and maintenance of the canine based upon their regular hourly deputy sheriff rate. Time allowed for care and maintenance shall be .5 hours per day. The officer shall be paid at the overtime rate for care and maintenance for hours in pay status in excess of 40 hours in a work week. The officer shall not be compensated for care and maintenance of the canine on any day

in which the canine is housed in a kennel for the entire day (12 midnight to 12 midnight).

(i) During the term of this Agreement, the Employer shall:

(1) allocate up to \$50.00 per Deputy Sheriff for the purchase of business cards; and

(2) allocate up to \$25.00 per Deputy Sheriff for the purchase of hand held radios and accessories.

(j) The County shall provide the Union with a side letter on vehicles.

(k) The salary schedules for Deputy Sheriffs are found in Appendix VII of this Agreement.

(l) With the prior approval of the Sheriff, a deputy sheriff who is on extradition overnight for one (1) or more nights shall receive four (4) hours of compensatory leave for one night only.

(m) Deputies shall be permitted to have one pair of shoes per year repaired.

(n) The parties commit to work together in an attempt to locate and secure space for a workout facility.

(o) The parties commit to work together in an attempt to locate and secure space for locker rooms.

(p) An employee who works a hospital guard detail shall be paid for a minimum of three (3) hours at one and one half (1 ½) times his/her regular rate of pay.

(q) Work Outside Published Schedules. If the Sheriff's Office requires deputies to work outside their published, scheduled hours and days and fail to provide the notice negotiated between the sheriff's office and MCGEO, the deputies shall be paid overtime for all hours worked. However, an employee's schedule may be changed upon mutual agreement of the deputy and a supervisor.

(r) The Sheriff's Office will award annual physical fitness incentives to encourage all deputies to remain in their best physical condition.

(i) Program Established. A voluntary physical fitness testing process is hereby established. This test will be offered annually to all unit members. Best efforts shall be made to schedule unit members up to three (3) hours to take this test while on duty as determined by the Sheriff or designee. However, unit members whose work schedule requires that the test be taken while off duty will be granted hour-for-hour

compensatory leave (up to three hours), during the administrative pay period in which the test occurs, for time spent participating in the test.

(ii) Test. The components of the fitness test will include body fat composition, aerobic endurance, muscular strength, and endurance and flexibility assessments. These components will be measured through the following means:

Push-ups

Sit-ups (modified)

3 mile walk or 1.5 mile run

Abdominal Stretch

Body fat composition measurement [or, at officer discretion, pull-ups or flexed arm bar hang]

(iii) Points. Point schedules for tests will be developed, which will result in the establishment of three award categories as follows:

Outstanding: 90+

Excellent: 80-89

Good: 70-79

(iv) Awards. Unit members who qualify for an award based upon their test results will receive an annual grant of paid administrative leave in the following amounts, to be used within a year of the date of the test:

Outstanding: 20 hours

Excellent: 16 hours

Good: 12 hours

(s) Deputy Sheriffs who work a ten hour shift that includes the period 11:00 pm to 5:00 am shall receive the same hourly shift differential under Article 5.3(a) as employees who work on a shift that begins between the hours of 11:00 pm and 5:00 am.

(t) The following items will be referred to the Countywide LMRC:

1. Work Out Facility: The Employer will provide deputies with work out facility, or cover the cost of membership to a health club facility;
2. Cell Phones: All Civil Deputies will be issued cell phones;
3. MDT: All field unit vehicles shall have MDT unit installed prior to being put into use.

APPENDIX IV - OPT Unit - DEPARTMENT OF CORRECTIONS AND REHABILITATION

(a) The parties shall establish a Labor Management Relations Committee (LMRC). LMRC agenda items will include:

Resource allocation

Officer authority

Career development

Quality of work life

Alternative Schedules

Inmate assaults on staff

Wellness programs

Staff safety

Job rotation

Rights and guidelines during investigations

Visiting police officers ability to carry guns

Review assignments which should be designated as a "two-person post"

Non-toxic cleaning products and floor stripping agents (regular reviews will be conducted and Risk Management may be requested to conduct chemical hazard testing)

Install secured, fenced parking area

(b) MCCF-Clarksburg shall have outside perimeter vehicles.

(c) All posts at MCCF-Clarksburg shall be equipped with a personnel monitor emergency device that will alert when staff are in need.

(d) DCR shall equip and train the ERT Unit.

(e) DCR employees shall be trained on equipment appropriate to their assignment as soon as practical.

(f) DCR employees shall have access to a departmental telephone in order to make and receive emergency calls. A mutually agreed upon definition of emergency will be established.

(g) The Department shall not assign mandatory overtime to an officer working the #3 shift (2:30 p.m.-11:00 p.m.) who is scheduled for approved leave the following work day.

(h) Voluntary and Involuntary Overtime

(1) Definitions

(A) Draft: An involuntary assignment of an officer to work overtime.

(B) Seniority: For the purposes of this Appendix to the

Agreement, seniority will mean "time in grade." Time in grade (seniority) for the purpose of this Agreement, excluding purchased credited service under the Employees' Retirement System (Chapter 22, Article III, of the Montgomery County Code) shall be calculated based on total time in grade, which is the effective date of an employee's promotion into that grade, except in cases when breaks in service of 2 or more years occur. In such cases, time in grade prior to the break in service shall not be counted.

(C) Volunteer: An officer who offers to work overtime by his/her own free will.

(2) Request for Overtime Usage

Shift supervisors may utilize sufficient overtime to maintain authorized minimum shift requirements and facility safety and security.

(3) Officer Selection for Overtime

(A) Officers who volunteer for overtime shall be selected on a first come/first serve basis. At each facility, a Voluntary Overtime Sign-up sheet will be posted at roll call, available to officers in that facility. Officers may sign-up to work overtime at one or both facilities. The sign-up sheet will be made available 30 minutes prior to the beginning of each roll call. The sheet will be initiated by the on-duty shift supervisor and kept in the shift supervisor's office and monitored by the lieutenants and captains. As the new shift begins, the sign-up sheet will be brought to roll call to be turned over to the shift commander of the new shift.

(B) Any officer who has chosen to voluntarily sign-up for overtime can elect to remove his/her name from the Voluntary Overtime Sign-up sheet anytime up to 4 hours prior to the end of his/her shift.

(C) Each facility will exhaust volunteers from its location before assigning volunteers from the other facility. Officers who have volunteered and have been assigned to work at another location must report directly to that facility. It is the shift supervisor's responsibility to insure the post is covered until the officer in transit arrives. Officers will remain in pay status while in transit.

(D) The warden, or designee, may specifically select an officer for special projects involving overtime if a special skill,

training or prior experience is needed to accomplish the special project or task at either facility.

(E) An officer who has received a within grade pay reduction as a result of disciplinary action shall be permitted to work voluntary overtime during the reduction period. The officer is subject to the draft.

(F) A draft list will be posted within the first two hours of each shift.

(4) Drafting Officers to Work Mandatory Overtime

(A) When there is a shortage of officers to work any given shift, and volunteers (including volunteers from other shifts and the other facility) cannot be recruited to work overtime, officers shall be drafted.

(B) Each shift supervisor shall prepare and update a list of their officers by seniority and affix the list to the shift supervisor's draft logbook. The draft list will be perpetual. Officers shall be granted reasonable access to the draft logbook and may review it in the presence of a supervisor.

(C) The next officer to be drafted shall be the least senior officer available to work according to the updated draft list. The shift supervisor will notify the officer to be drafted as soon as operationally possible.

(D) The shift supervisor shall record the date the draft was made and the name of the officer who was drafted. The supervisor shall sign as having drafted the officer. This record shall be maintained in the shift supervisor's draft log.

(E) An officer who is drafted shall not be drafted again within a 72-hour period from when the work period ended until such time as all other available officers who have not worked overtime in the past 72 hours have been drafted.

Anytime the draft process is initiated, the drafted employee shall be credited with being drafted regardless of the length of time worked. Officers, who are drafted and are able to obtain a volunteer to provide coverage, shall receive credit for their draft.

(F) Refer to LMRC: Emergency pay to officers drafted because poor scheduling failed to maintain adequate shift coverage.

(G) During an emergency, requirements of this directive shall be suspended and Correctional Officers shall be required to work as needed. Emergencies may include, but are not limited to, weather-related emergencies, natural disasters, power

failures, terrorist attack, fires, inmate disorders and disturbance, or general facility unrest.

(i) 1. Any Nurse who is identified as the medical charge nurse shall be paid a \$1.75 per hour differential for each hour worked.

2. At the beginning of the first full pay period following July 1, 2009, all bargaining unit employees who are Community Health Nurses working in the Department of Correction and Rehabilitation on that date will receive a \$1100 one-time, lump-sum retention incentive payment. The retention incentive payment will not be added to base salary. Any bargaining unit employee receiving the retention incentive must remain a Community Health Nurse working in the Department of Correction and Rehabilitation for at least 1 year after receiving the incentive, and must agree to repay a prorated amount

of the total incentive to the employer if the bargaining unit employee does not continue working as a nurse in the Department of Correction for the entire 1 year period. The employee will not have to repay the incentive if the employee dies, the County terminates the individual, or the employee is promoted to another position within the Montgomery County government. Employees hired or transferred after July 1, 2013, shall not be eligible to receive this incentive.

(j) DCR INVESTIGATION PROCEDURES

An employee who is interviewed by the Department of Corrections and Rehabilitation regarding a matter which might lead to disciplinary action being taken, shall have the following protections and rights:

(1) The bargaining unit member shall be informed of all his/her contractual rights prior to the commencement of the interview in the form of a handout, which both parties will sign. Copies will be issued to the investigator and person being interviewed.

(2) An employee who is the subject of an interview or investigation that could result in discipline has the right to request union representation. The union representative may be present during an entire interview. DCR shall delay an interview for a reasonable time, not to exceed 120 minutes, to allow the employee to obtain representation.

(3) A complete record (written, taped or transcribed) shall be

kept of the complete interview.

(4) All questions directed to the bargaining unit member during the interview will be asked by one investigator.

(5) Should a Statement of Charges be issued, the employee may request and DCR shall provide to the Union, all documentation that supports the disciplinary action. The Department may sanitize the documents to protect privacy.

(6) Prior to any interview or investigation, the Department representative will notify an employee if the interview could result in discipline.

Should the Department determine that, pursuant to the findings of the investigation, discipline is not warranted, the employee will be advised in writing of this conclusion as soon as is practicable.

(k) Emergency Response Team (ERT)

1. As the department regularly replaces equipment for the ERT team, it will be done on a uniform basis so that all unit members receive identical equipment.

2. An employee who is assigned to the emergency response team will receive a yearly stipend of \$1200 in the first full pay period following July 1.

(l) DOCR CHN Items

1. Uniform allowance will be increased to \$250.00

2. Uniforms can be purchased at any uniform shop providing a receipt is provided.

3. Any appropriate print uniform may be worn by the nurses.

(m) MCCF

1. The following items are referred to the LMRC:

- Provide non-toxic "Green" cleaning and floor stripping supplies;

- Provide better cleaning equipment and adequate number of supplies and equipment for each pods;

- The staff parking lot shall have secured access, to include gates and swipe cards.

- Discuss: Therapists and psychiatric nurses assigned to MCCF will be placed on a rotating stand by status based on seniority to perform unscheduled work (receive/return phone calls, perform evaluations by phone and/or report to work) and will receive stand by compensation.

(n) MCDC

1. The following items are referred to the LMRC:

-
- Secure fenced area for staff parking lot;
 - Upgrade CPU copier;
 - Provide non-toxic "Green" cleaning and floor stripping supplies;
 - Regular equipment maintenance.

2. The following will be completed during the reuse project:

- Enhance building ventilation;
- Counselors equipped with body alarms.

3. The County agrees to fix existing cameras in employee parking lot.

(o) PRC

1. The following items are referred to the LMRC:

- Provide additional employee parking.
- Create additional employee parking

(p) Pre-Trial

1. The following items are referred to the LMRC:

- Institute a weapons screening policy to include use of (metal detectors/wands);
- Develop a security protocol which specifically restricts client movement in a facility;
- Bullet proof glass for both reception areas

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2. A bargaining unit member shall not be required to conduct a field visit alone or unassisted when, based upon reasonable judgment of the bargaining unit member there is a known or perceived dangerous situation.

3. The bargaining unit member assigned to Pre-Trial Services as the security officer will receive the following;

- Stab vest with mandatory wear by officer;
- Digital camera;
- Flashlight;
- Self-defense training.

4. The establishment of a joint labor management committee composed of two employer representatives and two union representatives to develop a two-hour module of training. The topic of this training shall be safety of employees when working in the community.

(q) The following items are referred to the LMRC:

- New and better hats;
- Replace current computers with updated models and provide additional computers for unit member usage;

(r) The County agrees to update surveillance equipment at MCDC during the reuse project.

(s) Any unit member designated a certified trainer (completion of Train the Trainer Program) who does training off site shall still be paid for a half hour lunch period.

(t) Unit members being placed on administrative leave pending investigation shall be notified of the change in status prior to reporting for work. If it is determined during the employee's shift that they are being placed on administrative leave pending investigation, every effort will be made to protect the employee's confidentiality and all due discretion will be used when escorting the employee out of the facility.

(u) DOCR will make reasonable and diligent efforts to avoid scheduling training on a bargaining unit member's regularly scheduled days off.

(v) All language in this agreement that pertains specifically to community health nurses shall also apply to LPNs.

(w) All broken medical equipment shall be serviced or replaced as needed (the below listed items are now being examined to determine if repairs are necessary):

- 6 metal biohazard trash cans with step to open lid (MCDC/MCCF)
- Call bell system (MCCF)
- 1 Welch/Allen portable vital sign machine on wheels (MCDC/MCCF)
- 3 portable digital blood pressure machines
- 4 electronic thermometers
- 6 stethoscopes
- 1 pulse ox meter
- Sphygmomanometer wall unit with cuffs

(x) The clocks of record at MCCF and MCDC will be the clock at key check and the clock in the roll call room, respectively.

(y) The following items will be referred to LMRC for MCDC/MCCF:

- Cut trees along fence at MCDC fence line

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