

TESTIMONY FOR COUNTY EXECUTIVE
BILL NO. 26-99
COLLECTIVE BARGAINING - AMENDMENTS

GOOD AFTERNOON, MY NAME IS JAMES TORGESEN, LABOR/EMPLOYEE RELATIONS MANAGER IN THE OFFICE OF HUMAN RESOURCES, I HAVE BEEN ASKED BY THE COUNTY EXECUTIVE TO PROVIDE THE POSITION OF THE EXECUTIVE BRANCH CONCERNING BILL NO 26-99. IN GENERAL, WE SUPPORT THE DIRECTION OF THE PROPOSED AMENDMENTS TO THE COUNTY COLLECTIVE BARGAINING LAW. THE COUNTY COLLECTIVE BARGAINING LAW WAS PASSED BY COUNCIL IN JUNE 1986 AND HAS REMAINED UNCHANGED, EXCEPT FOR AMENDMENTS AFFECTING THE BARGAINING UNIT STATUS OF FIRE/RESCUE EMPLOYEES. THE COUNTY EXECUTIVE AND MCGEO, UFCW/LOCAL 1994, THE CERTIFIED REPRESENTATIVE WHICH REPRESENTS THE OPT AND SLT BARGAINING UNITS, HAVE BEEN SERVED WELL BY THE FRAMEWORK THAT THE LAW PROVIDES FOR THE CONDUCT OF COLLECTIVE BARGAINING AND THE DAY TO DAY RELATIONSHIP BETWEEN THE PARTIES. OVER THE YEARS THE PARTIES HAVE UTILIZED VIRTUALLY ALL OF THE KEY ELEMENTS OF THE LAW. WITH THIS EXPERIENCE IN MIND, THE FOLLOWING COMMENTS CONCERNING THE PROPOSED AMENDMENTS, AS WELL AS OTHERS I WILL SUGGEST, ARE MADE FOR THE COUNCIL'S CONSIDERATION.

- THE MOST SIGNIFICANT CHANGES IN THE PROPOSED AMENDMENTS AFFECT THE IMPASSE RESOLUTION PROCESS. THE CURRENT LAW CULMINATES IMPASSE WITH A FACT-FINDING PROCESS, THAT ALLOWS A NEUTRAL THIRD PARTY TO RECOMMEND TO THE PARTIES A RESOLUTION FOR EACH IMPASSE ITEM. THE PARTIES MAY ACCEPT OR MODIFY THE RECOMMENDATION TO ACHIEVE AGREEMENT. ITEMS WHICH REMAIN IN DISPUTE ARE SUBMITTED TO COUNCIL FOR DISPOSITION. THE BILL REPLACES THE FACTFINDING PROCESS WITH BINDING ARBITRATION. IT BIFURCATES ECONOMIC AND NON-ECONOMIC ISSUES AND REQUIRES THE PARTIES TO SUBMIT A TOTAL PACKAGE OFFER ON ECONOMIC ITEMS AND SEPARATE OFFERS ON EACH NON-ECONOMIC ITEM. FOR THE ECONOMIC ITEMS, THE ARBITRATOR MUST CHOOSE AS A TOTAL PACKAGE THE EMPLOYER'S OFFER OR THE UNION'S OFFER. IN CONTRAST, ON NON-ECONOMIC ITEMS THE ARBITRATOR MAY FASHION A SEPARATE AWARD ON EACH ITEM. WE DO NOT FAVOR THE TREATMENT OF ECONOMIC AND NON-ECONOMIC ITEMS AS PROPOSED IN THE BILL. WE PROPOSE THAT THE ARBITRATOR MAKE AN AWARD ON EACH ITEM, ACCEPTING EITHER THE EMPLOYER'S OR UNION'S OFFER, WITHOUT PERMITTING THE ARBITRATOR TO MODIFY AN OFFER. THE PARTIES ARE ACCUSTOMED TO AN ITEM BY ITEM REVIEW UNDER THE CURRENT FACTFINDING PROCESS. IT IS PREFERABLE TO HAVE THE PARTIES WRITE THE LANGUAGE, RATHER THAN ALLOW AN ARBITRATOR TO IMPOSE A
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HYBRID ON THE PARTIES WHICH CREATES A POTENTIAL FOR AMBIGUITY.

- IF THE COUNCIL DECIDES TO ADOPT THE AMENDMENTS AS PROPOSED, THE LAW SHOULD BE AMENDED TO PROVIDE, AT THE VERY LEAST, GREATER DEFINITION AS TO WHAT CONSTITUTES AN ECONOMIC ITEM, RATHER THAN LEAVING THAT DETERMINATION SOLELY TO THE ARBITRATOR.
- THE AMENDMENTS PROPOSE TO MOVE THE DATE FOR ISSUANCE OF THE ARBITRATOR'S AWARD FROM FEBRUARY 1 TO MARCH 1. WE AGREE THAT SOME ADJUSTMENT IS NEEDED TO THE DATES IN THE IMPASSE PROCESS. MORE TIME IS NEEDED TO ALLOW THE PARTIES TO REACH AGREEMENT ON THEIR OWN. MOREOVER, ADDITIONAL TIME IS NEEDED TO FIRM UP ECONOMIC PARAMETERS IN THE EARLY PART OF THE CALENDAR YEAR. HOWEVER, THE PROPOSED MARCH 1 DATE LEAVES LITTLE TIME FOR THE EXECUTIVE TO FINALIZE BUDGET RECOMMENDATIONS AND DOCUMENTS FOR PUBLICATION ON MARCH 15. WE PROPOSE THAT THE DATE OF THE AWARD BE MOVED BACK TO FEBRUARY 15 AND THE INITIAL IMPASSE DATE BE ADJUSTED TO FEBRUARY 1. THUS GIVING THE PARTIES ADDITIONAL TIME TO BARGAIN.

IN ADDITION, TO THESE MODIFICATIONS THE COUNTY EXECUTIVE REQUESTS THAT THE COUNCIL CONSIDER THE FOLLOWING ADDITIONAL AMENDMENTS TO THE LAW.

- IN SECTION 33-102, THE DEFINITION SECTION OF THE LAW, WE BELIEVE TWO CHANGES ARE NEEDED. UNDER THE DEFINITION OF "EMPLOYEE" THE LAW DEFINES WHICH EMPLOYEES ARE ELIGIBLE FOR COLLECTIVE BARGAINING RIGHTS. CURRENTLY PROBATIONARY EMPLOYEES ARE EXCLUDED, BUT THE LAW DOES NOT DEFINE THE LENGTH OF THE PROBATIONARY PERIOD. TO INSURE THAT THE LENGTH OF THE PROBATIONARY PERIOD IS ESTABLISHED AND IS NOT OTHERWISE SUBJECT TO NEGOTIATION, WE RECOMMEND THAT A 12 MONTH PROBATIONARY PERIOD BE INCLUDED IN THE LAW. THIS IS CONSISTENT WITH THE NEW HIRE PROBATIONARY PERIOD FOR UNREPRESENTED EMPLOYEES. SECONDLY, WE REQUEST THAT AN ADDITIONAL EXEMPTION BE ADDED TO COVER "CONFIDENTIAL EMPLOYEES" THIS IS A COMMON EXCLUSION IN A COLLECTIVE BARGAINING ENVIRONMENT. CONFIDENTIAL EMPLOYEES ARE THOSE EMPLOYEES WHO PREPARE OR REVIEW CONFIDENTIAL PERSONEL MATTERS INVOLVING BARGAINING UNIT EMPLOYEES OR THE DEVELOPMENT OF POLICIES AFFECTING WAGES, HOURS AND WORKING CONDITIONS OF THOSE EMPLOYEES. IN ORDER TO AVOID CONFLICTS OF INTEREST, EMPLOYEES WITH THESE RESPONSIBILITIES ARE TYPICALLY EXCLUDED FROM THE BARGAINING UNIT IN OTHER

JURISDICTIONS. THIS PROPOSAL WOULD PRIMARILY IMPACT EMPLOYEES PROVIDING CLERICAL SUPPORT TO SECTION AND DIVISION CHIEFS WITHIN THE GOVERNMENT AND WOULD EFFECT APPROXIMATELY 50-75 POSITIONS.

- WE PROPOSE THAT THE CURRENT LANGUAGE AT SECTION 33-108(b), WHICH LIMITS THE TERM OF ANY COLLECTIVE BARGAINING AGREEMENT TO THREE YEARS, BE AMENDED TO PERMIT AGREEMENTS OF UP TO FIVE YEARS. THE PARTIES MAY FIND IT IN THEIR MUTUAL INTEREST TO HAVE LONGER AGREEMENTS TO ENCOURAGE THE STABILITY OF LABOR RELATIONS.
 - THE BILL DOES NOT CHANGE THE CRITERIA USED TO DETERMINE THE REASONABLENESS OF THE PARTIES FINAL OFFERS. IN PARTICULAR, THE ARBITRATOR UNDER 33-108(f)(4)(D) MAY REVIEW THE WAGES HOURS AND WORKING CONDITIONS OF SIMILAR EMPLOYEES OF **PRIVATE EMPLOYERS** IN MONTGOMERY COUNTY WITH COUNTY BARGAINING UNIT EMPLOYEES. HOWEVER, IN COMPARING SIMILAR EMPLOYEES IN **PUBLIC EMPLOYMENT**, THE WASHINGTON METROPOLITAN AREA AND MARYLAND ARE USED. PROPER BALANCING OF PUBLIC AND PRIVATE EMPLOYER COMPARISONS SHOULD ALLOW FOR SIMILAR JURISDICTIONS TO BE USED IN BOTH SECTORS. WE PROPOSE THAT PRIVATE EMPLOYER COMPARISONS BE EXPANDED TO INCLUDE THE WASHINGTON METROPOLITAN AREA AND MARYLAND.
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- FINALLY, AS YOU KNOW, THE COUNTY COLLECTIVE BARGAINING LAW ESTABLISHES CERTAIN EMPLOYER RIGHTS WHICH ARE DESIGNED TO RESERVE TO THE EMPLOYER RESPONSIBILITIES WHICH ARE CRITICAL TO THE EFFECTIVE MANAGEMENT OF THE COUNTY GOVERNMENT. UNDER THE LAW, COLLECTIVE BARGAINING AGREEMENTS OR THE APPLICATION OF PROVISIONS OF THE LABOR LAW ARE NOT SUPPOSED TO IMPAIR THE EMPLOYER'S EXERCISE OF THESE RIGHTS. A FAIR AMOUNT OF TIME, WHETHER IN NEGOTIATIONS OR IN THE DAY TO DAY ADMINISTRATION OF THE LABOR AGREEMENTS THE PARTIES FOCUS ON ISSUES THAT FALL UNDER THE AMBIT OF THESE ARTICULATED RIGHTS, SUCH AS MATTERS PERTAINING TO ASSIGNMENT OF WORK, SCHEDULING OF EMPLOYEES AND DETERMINATION OF PROMOTIONAL STANDARDS. WE PROPOSE THAT THE PREFATORY LANGUAGE UNDER SECTION 33-107(b) BE AMENDED TO INSURE THAT EMPLOYER RIGHTS ARE NOT DIMINISHED, RESTRICTED OR OTHERWISE CONDITIONED. THIS CHANGE WILL SERVE AS ADDITIONAL GUIDANCE TO THE PARTIES, AND IN PARTICULAR, TO THE LABOR RELATIONS ADMINISTRATOR, WHO IS REQUIRED BY THE LAW TO INTERPRET AND ADJUDICATE NEGOTIABILITY OR OTHER DISPUTED APPLICATIONS OF THE LAW.

I HAVE INCLUDED DRAFT LANGUAGE FOR PROPOSED CHANGES WITH COPIES OF MY WRITTEN TESTIMONY.

WITH THESE CHANGES, WE BELIEVE WE WILL CONTINUE TO HAVE A
WORKABLE COLLECTIVE BARGAINING FRAMEWORK THAT WILL
PROVIDE LABOR RELATIONS STABILITY TO INSURE THAT THE
SERVICES TO THE CITIZENS OF THE COUNTY ARE PROVIDED IN AN
EFFICIENT AND EFFECTIVE MANNER. THANK YOU.

County Executive's Proposed Amendments to Bill-26-99. Collective Bargaining - Amendments

Key: Underlining indicates new language in draft bill. Double underlining indicates language recommended to be added to the bill. [**Boldface brackets**] indicate language deleted in draft bill. ~~Strikethroughs~~ indicate language recommended to be deleted from the bill.

Item #1: Change impasse process in bill.

Sec. 33-108. *Bargaining, impasse, fact-finding, and legislative procedures.*

(f) (1) If binding arbitration is invoked, the mediator/ arbitrator must require each party to submit a final offer, which must consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the mediator/arbitrator directs. If only complete package proposals are required, the mediator/arbitrator must require the parties to submit jointly a memorandum of all items previously agreed on. The final offer submitted by each party must separately identify economic and non-economic proposals. Economic proposals must include only salary and wages, pension and other welfare benefits, such as health insurance. The mediator/arbitrator must decide any issue regarding whether a particular proposal is economic or non-economic.

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(3) On or before March 1, the mediator/arbitrator must select, as a whole, the more reasonable of the final economic offers for each proposal the most reasonable offer submitted by the parties. With regard to the economic offers, the The mediator/arbitrator must not compromise or alter a final offer. The mediator/arbitrator must not consider or receive any argument or evidence related to the history of collective bargaining in the immediate dispute, including any previous settlement offer not contained in the final offers. However, the mediator/arbitrator must consider all previously agreed-on economic items, integrated with the disputed economic items, to decide which economic offer on each item is the most reasonable. The mediator/arbitrator must also decide which of each of the parties' non-economic proposals is the most reasonable under all the circumstances. The mediator/arbitrator may compromise, alter, or reject any non-economic proposal.

Item #2: Require a minimum 12-month probationary period before employee is eligible for bargaining unit membership.

Sec. 33-102. *Definitions.*

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(4) *Employee* means any person who works under the County government merit system on a continuous full-time, career or part-time, career basis except:

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(N) newly hired persons ~~on probationary status~~ who have not successfully completed a probationary period of at least 12 months;

Item #3: Exclude confidential employees from bargaining unit.

Sec. 33-102. *Definitions.*

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(4) *Employee* means any person who works under the County government merit system on a continuous full-time, career or part-time, career basis except:

* * *

(U) confidential employees, which means those employees whose regular duties include the preparation or review of confidential personnel matters affecting bargaining unit employees or the development of policies affecting the wages, hours, or working conditions of bargaining unit employees.

Item #4: Establish earlier deadline dates for declaring and resolving bargaining impasses.

Sec. 33-108. *Bargaining, impasse, fact-finding, and legislative procedures.*

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(e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the mediator/[fact-finder] arbitrator, or the parties may jointly request [his] those services before [declaration of] an impasse is declared. If the parties do not reach an agreement by [January] February 1st, an impasse

exists. Any issues regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

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- (f) (3) On or before ~~March 1~~ February 15th, the mediator/arbitrator must select, as a whole, the more reasonable of the final economic offers for each item in dispute, the most reasonable offer submitted by the parties.

Item #5: Allow labor agreements to have a maximum 5-year term.

Sec. 33-108. *Bargaining, impasse, fact-finding, and legislative procedures.*

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- (b) Any provision for automatic renewal or extension of a collective bargaining agreement is void. An agreement is not valid if it extends for less than one (~~1~~) year or for more than ~~three (3)~~ 5 years. All agreements become effective July 1 and end June 30.

Item #6: Allow the arbitrator to consider the wages, benefits, and working conditions of similar employees of private employers in the Washington Metropolitan Area and in Maryland.

Sec. 33-108. *Bargaining, impasse, fact-finding, and legislative procedures.*

- (f) (4) In making [findings of fact and recommendations] a determination under this subsection, the mediator/[~~fact-finder~~] arbitrator may [take into account] consider only the following factors:

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- [(iv)] (D) Comparison of wages, benefits, hours, and other working conditions of similar employees of private employers in ~~Montgomery County~~ the Washington Metropolitan Area and in Maryland.

Item #7: Include language in the bill that prohibits the Labor Relations Administrator from diminishing management rights when he makes a negotiability determination.

Sec. 33-103. *Labor relations administrator.*

(a) [There is established the position of] A Labor Relations Administrator[, to provide for the effective implementation and administration of] must be appointed to effectively administer this article [concerning] as it governs selection, certification and decertification procedures, prohibited practices, and the choice of a mediator/fact-finder. The [Labor Relations] Administrator [shall exercise the following powers and perform the following duties and functions] must:

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(8) Determine any issue regarding the negotiability of any collective bargaining proposal.

[(8)] (9) Exercise any other powers and perform any other duties and functions [as may be] specified in this article.

(b) The Administrator must not diminish, restrict, or place conditions on the employer rights in Section 107(b) when the Administrator determines if a collective bargaining proposal is negotiable.

[(b)] (c) * * *

[(c)] (d) * * *

Item #8: Proposed amendment to impasse process if Council bifurcates consideration of economic and non-economic items.

Sec. 33-108. Bargaining, impasse, fact-finding, and legislative procedures.

(f) (1) If binding arbitration is invoked, the mediator/ arbitrator must require each party to submit a final offer, which must consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the mediator/arbitrator directs. If only complete package proposals are required, the mediator/arbitrator must require the parties to submit jointly a memorandum of all items previously agreed on. The final offer submitted by each party must separately identify economic and non-economic proposals. Economic proposals must include only salary and wages, including the percentage of the increase in the salary and wages budget that will be devoted to merit increments and cash awards, pension and other ~~welfare~~ retirement benefits, such as health insurance

and employee benefits such as insurance, leave, holidays, and vacations. The mediator/arbitrator must decide any issue regarding whether a particular proposal is economic or non-economic.